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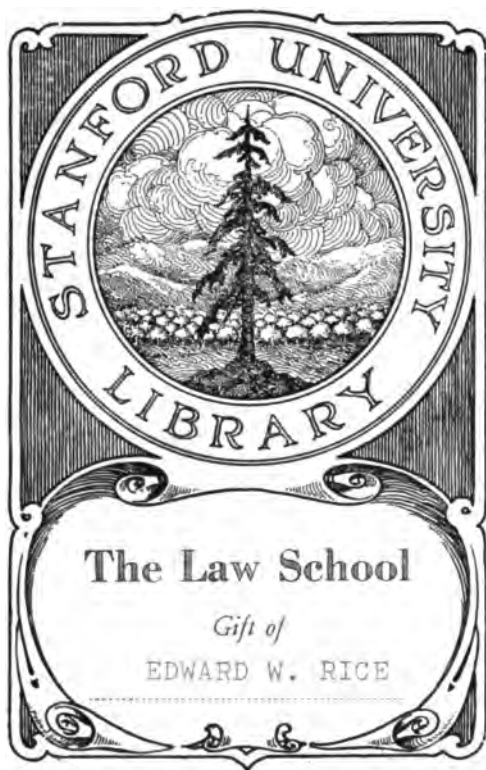
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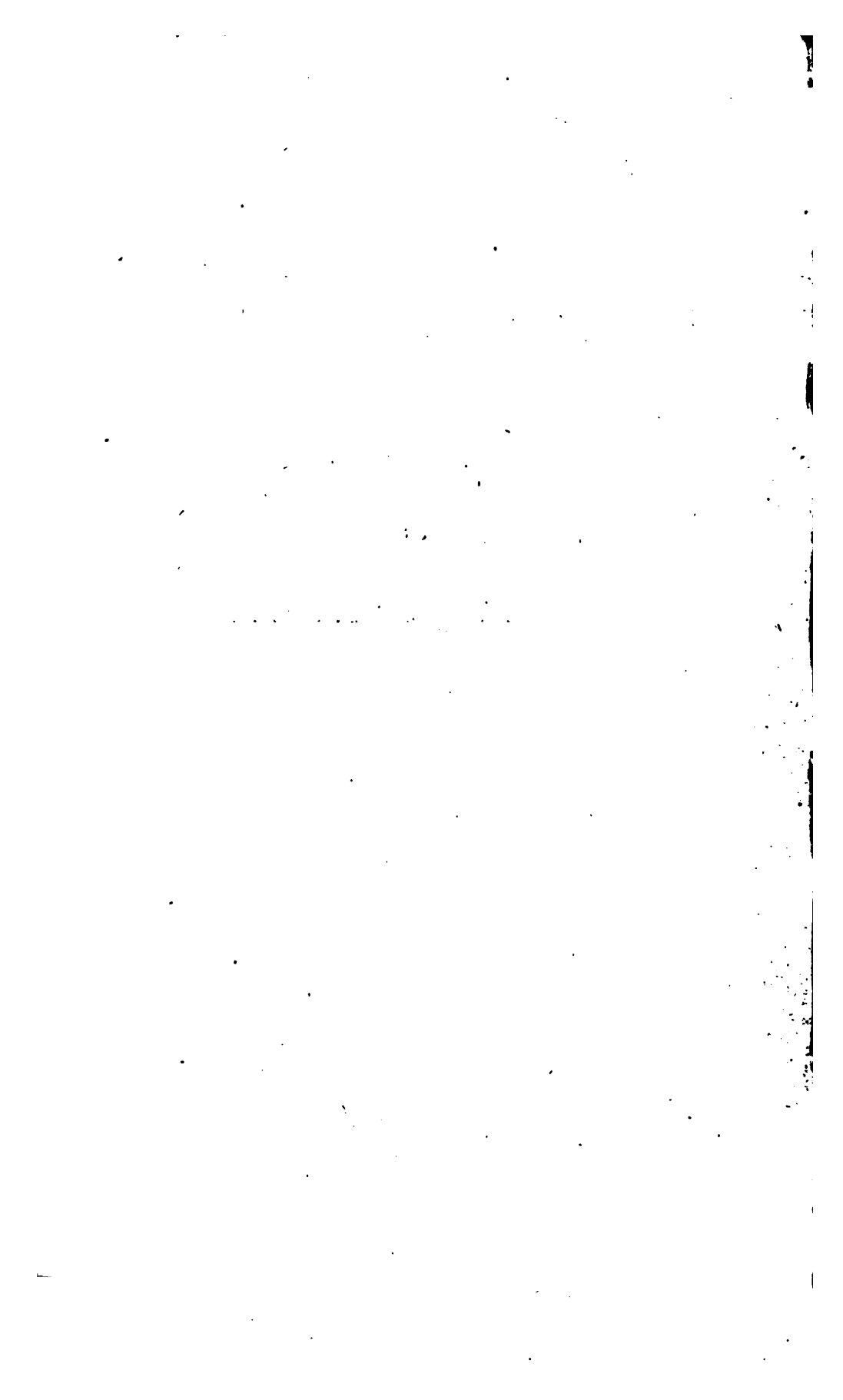


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**A TREATISE**  
**ON**  
**CONVEYANCING,**  
**&c. &c.**



A  
**TREATISE**  
ON  
**CONVEYANCING**  
WITH  
*A VIEW TO ITS APPLICATION TO PRACTICE;*  
BEING  
A SERIES OF PRACTICAL OBSERVATIONS,  
WRITTEN IN A PLAIN FAMILIAR STYLE,  
WHICH HAVE FOR THEIR OBJECT TO ASSIST IN PREPARING  
**DRAUGHTS,**  
AND IN JUDGING OF THE OPERATION OF  
**DEEDS,**  
BY DISTINGUISHING BETWEEN  
THE FORMAL AND ESSENTIAL PARTS OF THOSE DEEDS, &c.  
IN GENERAL USE.  
BEING  
A COURSE OF LECTURES.  
WITH AN APPENDIX OF SELECT AND APPROPRIATE  
PRECEDENTS.

—  
**BY RICHARD PRESTON,**  
OF THE INNER TEMPLE, ESQ.

AUTHOR OF THE ELEMENTARY TREATISE ON THE QUANTITY OF ESTATES, &c. &c.

—  
*In primis hominis est propria veri inquisitio atque investigatio.*  
Cic. de Off. l. 1. 4-5.

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1806.

W. Flint, Printer, St. Sepulchre's.

TO CHARLES BUTLER, ESQ.

LINCOLN'S INN.

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MY DEAR SIR,

ALLOW me to place under your patronage the volume now offered to the profession. That it shall be received favorably by a gentleman of your experience and extensive research in the study and practice of the Laws of Property ; by the Editor of those *Annotations on Coke on Littleton* which have been so deservedly admired by the profession, and cited with approbation even by the Judges ; will not fail to ensure it a favorable reception with those for whose use it is intended.

That you approved of the work when in manuscript and in an imperfect state, was one of the principal inducements to its publication. At the same time I am fully aware that I am more indebted to your friendship, and kind partiality, than to the merit of the work for those very favorable terms in which you

have been pleased to express yourself of the performance.

To have merited your friendship is one of those sources of satisfaction, which has supported me, when others have failed; and posterity will no doubt do ample justice to the liberality, with which you have countenanced those whom you thought likely to become useful members of the profession.

I consider myself only one of many who have been raised into notice under the protection of your patronage and good opinion; and I shall ever retain a grateful sense of the obligations I owe you.

I am,

My Dear Sir,

Your very faithful,

And obliged Servant,

*RICH. PRESTON.*

*Easter Term, 1806.*

## PREFACE.

**T**HE greater part of the subject of the following sheets was originally dictated by the author to his pupils in a series of lectures, delivered by him, and committed to writing by them. The avowed object was to assist their studies; to direct their attention to points merely practical; and render their exertions beneficial to them as well as useful to himself while they remained in his chambers. The result more than fulfilled his expectations. Encouraged by the observation of the utility of this course of study, he shewed the MS. while in its original state, to several of his professional friends; to some who had greater, and to others who had less experience. Had the reception they gave the work been less favorable than it was, he would have felt no hesitation in offering it to the public. He is truly sensible of the friendship of those gentlemen, and of the honor they confer on him by their good opinion. Many however of their kind

expressions, he ascribes to the partiality of friendship, rather than the merit of his performance,

Such as the work is, it is offered to the profession. In publishing it the author has no other motive than to do good; to afford to others that assistance for which, at one period, he would have been extremely grateful.

The peculiar advantage of this work, if it has any, is that it is the fruit of much reflection and extensive experience. It may be considered as the sentiments of a practical man, on a practical subject. As far as the theory is given,—the attention is kept closely to those points which are of ordinary occurrence, and comprise the more useful parts of a lawyer's knowledge. Recondite points are highly valuable to form the profound, and well-read lawyer; but to the student, and mere practical conveyancer, that knowledge is most useful, which is most necessary to be gained for the purposes of general business,



When the practice, and the rules by which it is governed, are understood, the study of more abstruse points will be rendered easy. In teaching the law, as well as any other science, it should be a rule to proceed by insensible steps ; to begin with that part which is easy, and introductory, and proceed to those parts of the science which are more difficult.

The misfortune of a person, who, either as clerk to a solicitor, or as a student in a conveyancer's chambers, begins to study the practice of conveyancing, is, that he is taught by form, or precedent, rather than by principle. He is made to copy precedents, without knowing either their application, or those rules on which they are grounded. When he begins to prepare draughts, he is led to expect all his information from these forms ; and his knowledge is, in the end, as limited as the means by which he has been instructed.

One of the principal difficulties to be surmounted, by a person so educated, is to gain sufficient strength of mind, and resolution, to

free himself from the shackles of precedent. The apprehension of erring makes him fear to try his own resources. This fear proceeds from a want of sufficient knowledge, to discriminate between form and substance; in other words, between the formal and the essential parts of a deed, &c. The next difficulty proceeds from the want of ideas; in short, of useful knowledge. Without understanding, from principle, the object to be attained, how is any one to accomplish that object? The very foundation is wanting. There are no ideas formed; and, for that reason, none can be brought into action. To acquire these ideas, extensive reading, and, to a certain extent, the practical knowledge of business; in other words, an intimate acquaintance with the provisions, which are absolutely *necessary*, and also of those which are usual, in transactions of this sort, are to be acquired: and a collection of good precedents is one of the sources from which, knowledge of the usual provisions may be attained. When the object to be attained is fully comprehended, the next consideration is

the means by which it is to be accomplished. This leads to the form of the assurance.

Two conclusions may be justly formed; 1st. That no one will ever become a good conveyancer, unless he understands so much of the law, as will make him acquainted with the rules by which property and the mode of conveying it are governed; 2dly, That unless he makes himself so far acquainted with practice, as to understand those forms which are in use by practical men, he can never attain to any eminence. Few who can form correct ideas, feel any difficulty in giving them expression by language; but this will be done, with more or less precision, and more or less succinctly, according to the peculiar talents and habits of the party. In the practice of the conveyancer there is a species of language founded on decided cases, or sanctioned by experience, which is perfectly understood by all professional men of information: by them it is read with ease, and comprehended without a second thought; because the words have a technical and appropriate sense, on which

good lawyers are, by the rules of law, bound to agree. This is the advantage of a close adherence to this species of language. A polite scholar would, perhaps, be disgusted with the phraseology, and with the tameness of the periods. He would be led to make an effort to give the like ideas, in all the elegance of polite diction, and finished sentences ; but would any lawyer be able to advise with certainty, on the construction this language would receive ? A departure from technical language would, sometimes, allow of a twofold construction, in short, raise a doubt whether the words were to be read in one sense, or in another. Something of this is to be discovered in the wills, or the contracts, of some of the best scholars, and even of men who, as merchants, are in the habits of business ; and in acts of parliament when altered by any other than professional men. It is also to be found in the wills of eminent lawyers who, from their peculiar habits of business, have never turned their attention to express legal forms, in technical language. The great art with the conveyancer, is to use no other lan-

guage, in the operative part of deeds, than such as has a fixed and definite meaning. For the sake of his reputation, and from a sense of duty, it should be his first care, to use such phrases only as he is satisfied will receive the meaning he ascribes to them, and attain the very object at which he aims. If the words he uses, can be read with two different applications, he has injured, instead of serving his client: he has involved him in the chance, at least, of a suit at law, or in equity, instead of placing him in a state of repose and security; and perhaps has injured, nay even ruined, a man whom it was his intention to have served and protected.

These observations are introduced for the purpose of shewing the importance of an adherence to language sanctioned by the experience of professional men of eminence. Nor does this language exclude simplicity or neatness. A well prepared instrument may be read, and admired, by a man of sense. At least, the better it is understood, the more it will please; and an excellent scholar would

in the end, be convinced that he could never do better, for his ease and comfort, or the security of his employer, than condescend to become a careful observer of the language of these forms. His study should be to simplify the terms, as much as circumstances, and the intention will admit. This will be most effectually accomplished, by rejecting tautologous and synonymous expressions, and confining himself to that part of technical language, which is essential to express, or give legal effect to the intention of the parties. The student should also prescribe it to himself as a rule, to adhere to general forms, and to the same language as much as the intention will admit, and to vary the essential parts as often as circumstances require it ; and to be careful to express the essential parts of the deed in language the most precise and definite that he can find, or that experience, precedent, or his own improved judgment shall dictate. As often as he varies from form, or from the experience of others, he should be well assured, that he is sanctioned by superior authority ; and that the variation will have exactly the effect he wishes to be ascribed to it.

These observations are not meant to tie down the student to be a mere copyist ; to deny him the best privilege of a liberal mind ;—To think and act for himself. They are intended only as cautions to youth, and as a guard against too great anxiety to give proofs of aspiring genius, by a total neglect of form, or disregarding the practice of experienced men. The further he advances, the more he will be satisfied of the value of the experience derived from others ; and, as far as the author's observations have enabled him to judge, those gentlemen alone have succeeded who have pursued this course of study.

To distinguish between the formal and essential parts of deeds, is one of the great objects of the work now submitted to the profession. To guard the student against error, and to form his mind, as they are objects of the first importance, so they are always kept in view throughout this work.

That this object might be continually enforced, the author has frequently sacrificed himself to his reader. He has rather subject-

ed himself to the imputation of repetition of the same thoughts, in different parts of the work, than neglect those cautions, or that chain of thought, or line of arrangement which the immediate context seemed to require. This will be found in a more than ordinary degree in the chapter on Recoveries and Fines : and it is in those chapters to be accounted for, from the circumstances that the part in recoveries which relates to recovery deeds ; and the part in fines, which relates to the form, &c. of fines, and the deed to lead or declare the uses, are additions to the original manuscript.

Each chapter contains a succinct essay on the particular assurance of which it treats. In reference to that assurance there is a part which is *theoretical*, and a part which is *practical*.

The theoretical part is intended to inculcate first principles ; to teach the student *elementary* rules ; the nature, the object, and the use of the particular assurance ; the purposes to which it may be applied, and the circum-



stances under which it may be used, and the cautions to be observed. The practical observations detail the parts of the deeds, &c. with comments on the form of the assurance. They also distinguish such parts as are formal, from those which are essential ; and in the *Appendix* forms are added, in illustration of the practical observations.

This arrangement of the subject accounts in some degree for the arrangement of the book.

Some may express their surprize that the work commences with *Common Recoveries*. This happened by accident, but this very accident, has perhaps been productive of advantage, as it determined the form of the different chapters,

*Sheppard*, in his *Touchstone*, commenced with fines and common recoveries. This circumstance, however, had no influence in the author's arrangement, For its origin, it is in-

debted to the circumstances under which the observations were dictated.

The original design was to write on detached clauses of deeds, as collected for the use of pupils, in several volumes, denominated *Common Forms*. The clause of agreement for suffering a common recovery, and the declaration of the uses, is the first form, in the first of these volumes; and this single circumstance was the origin of the arrangement of the work,

After some progress had been made with the observations, the author felt, that if he had sat down to write a systematical treatise on conveyancing, he ought to have given a different form to the work, and treated of it, in a more scientific manner, and by way of elementary deduction. Reflection reconciled him to the course he had adopted. Each chapter, as it stands, is a commentary on the particular assurance of which it treats; and the author considers that it may be used by others, as he intended it should be used by

his own pupils. The moment it is determined to adopt a particular assurance, for example, a lease and release, the chapter which treats of that assurance may be read by the student, with a view to understand the general rules respecting these deeds, and the parts of which they consist. When he is preparing his draft, he may consult each division of that part of this chapter, which treats of the form of this assurance, and thus, at once, with the assistance of his precedent, and with no great exertion of mind, combine the theory and the practice, by which his attention is to be governed. By pursuing the same course, as often as he shall find it necessary, he will ultimately, and at no distant period, render any further recourse to this chapter unnecessary.

Beyond the form of a deed, are its final object; for instance, the lease and release may be parts of an assurance for suffering a common recovery; for completing a purchase; for effecting a settlement, &c. The particular learning most interesting, as to common recoveries, will be found under that chapter; and

may be consulted as the occasion shall require : and should the author be blessed with life and health, and his labors be favorably received by the profession, he will add chapters which shall contain the appropriate observations on purchases, settlements, &c. Considerable preparation is made towards the accomplishment of this object,

Another reason too which determined the author not to begin from the more elementary parts of conveyancing, was, that he found this part of the subject, performed in a very valuable little manual, under the title of *Sheppard's President of Presidents*. This work is now out of print. By way of lecture, the writer of these observations, some time since added considerable additions to it, and the present impression of his mind is rather to publish a new edition of this little work, with the addition of his notes, than to withhold from the profession a book more valuable, and more useful, than any he could substitute, and he will take an early opportunity of publishing this little work, and, by that means,

supply the deficiency which may appear in the present publication.

The present publication is intended to consist of two volumes.

The volume now offered to the profession embraces the following subjects :

Common Recovery,  
Recovery Deed,  
Fines,  
And an Appendix of Forms of Recovery  
Deeds.

The next volume, which, with the exception of the first chapter, is ready for the press, will include the heads,

Deeds to lead and Deeds to declare the  
Uses of Fines,  
Leases,  
Lease and Release,  
Appointments,  
Bargain and Sale,  
Assignments of Choses en Action,

Assignments of Terms,  
——— of attendant Terms,  
Surrenders, and Merger as connected with  
that learning.\*

When the author shall have leisure to finish  
another volume, it will comprise practical  
observations on

Purchase Deeds,  
Settlements,  
Wills, &c.

The author has endeavored as well to form  
the judgment of the student to the point of  
title, and enable him to give an opinion on a  
deed already prepared, as to prepare one with  
skill.

To complete a regular course of study, on  
practical subjects, the author has begun and  
made considerable progress with a treatise on  
Abstracts of Title. This treatise will be of

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\* It is more than probable that these heads will require two  
volumes.

considerable length, and to finish it, in a manner the subject deserves, will require great labor and research. It is intended in this work, to shew the points to be regarded in

1. Preparing an abstract,
2. Examining it,
3. Arranging it,
4. Advising on it,

And thus to detail the duty of the solicitor and of the counsel, in every branch of the profession. Throughout this work the author has availed himself of the result of all the practical information he has been able to collect in the course of twenty years' experience; and has endeavored to teach the mind those modes and habits of arrangement, reflection, &c. by which the conveyancer is enabled to accomplish those objects, which are beyond the reach of a mind, unacquainted with the powers of combination, arrangement, classification, &c.

In the law, as in every other study, the

principal end to be attained, is to gain simple ideas ; and for this purpose to separate, and as occasion requires, again combine parts of a complex idea ; to distinguish carefully and correctly ; and to give to distinct objects, the distinct ideas to which they are separately entitled. This indeed is the principal secret of all science, and distinguishes the great lawyer, from those who have read much and profited little ; who have blended together ideas totally distinct ; have learned cases without understanding their principle ; in short, have confused, instead of informing, themselves.

To teach the mode of doing this, as far as it can be taught, and as far as the author's feeble powers will enable him, was an object thought deserving of the attempt ; and the attempt was made in a series of lectures : and though the author feels how short he has fallen of perfection, his endeavors may call forth the exertions of some one, more equal to the performance. While, in every other science, there has been a laudable exertion employed in



simplifying the elements of science, and facilitating the attainment of knowledge, his object has been to assist in this plan, as far as it embraces the subject, which has employed his attention and occupied nearly all his time and all his thoughts, for full twenty years.

With the last work he wishes to conclude his labors; and if he shall find he has assisted others, in their studies, he will feel himself abundantly gratified, in having fulfilled those duties he owes to the profession, as a return, and grateful tribute, for the liberal patronage with which his humble endeavors have been rewarded. Circumstances would have perfectly justified him in consulting his ease, rather than appearing before the public again, and exposing himself to censure or critical observation. Writing from the motive of doing good, and not of interest, or vanity; sacrificing his own best comfort, and convenience to a sense of duty; he will lament to find that he has failed of his object. He has no expectation that his labors are exempt from errors. From his own observation, he is well assured

few books on the law, can be expected to be free from observation, and still less from difference of opinion, on practical points. As far as it has been in his power, he has endeavored to have his errors corrected. This has been done rather from an anxiety not to mislead, than from fear of the lash of censure. From the liberality he has uniformly experienced, he is well assured, that, from those to whom he is known, he has nothing severe to apprehend. They will pardon the error in weighing the motive, and will be satisfied that in treading on new ground, many errors were to be expected. All he can say, is, that he will be the first to correct any errors, the moment they shall be detected by himself, or communicated by others. His own justification will be in the fullest conviction, he has not omitted any opportunity of giving the best information in his power, to those whom he wishes to assist,

As this work was for the most part written without any previous collection of authorities, and without any concerted plan, it must

be in many instances received as the opinion of the author, on points of practice ; and not as a collection of texts from decisions of approved authority. Though a reference is frequently made to decided cases, these have been added merely to afford the reader the opportunity of consulting some cases relating to the point. The great difficulty, in many instances, has been to find authorities which could exactly support the author's position. This has happened from the circumstance, that the author has taken practical conclusions rather than the determination of the point of any particular case ; and, in many instances the observations are a mere transcript of opinions given in the course of practice. From these observations, the reader will judge with caution, and give the different propositions that degree of credit only they shall be found to deserve on a more extensive research into the law, and on a perusal of books of approved authority.

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## APPENDIX.

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PRACTICAL TREATISE  
ON  
**CONVEYANCING.**

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CHAP. I.

OF COMMON RECOVERIES AND THEIR OPERATION,  
AND FORM OF RECOVERY DEEDS.

---

*I. Of Recoveries and their Operation.*

---

NO instrument prepared by the conveyancer requires more attention than this assurance.

It is to be considered principally as the assurance by which tenant in tail (a) may convert, or enlarge his estate tail, into a fee-simple; or, more accurately speaking, (as will be afterwards shewn) into a fee commensurate with the estate, which, at the time of creating the intail, was vested in the person by whom the intail was created, and thus bar the estate tail, and all remainders and

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<sup>1</sup> (a) *Fig. on Recoveries, 121. Siderf. 202.*

reversions expectant on that estate; and all conditions and collateral limitations annexed thereto (b), and charges subsequent to the same. When the donor of the estate-tail has a fee-simple at the time of creating the estate-tail, the recovery of tenant in tail, duly suffered, will enlarge his estate-tail into a fee-simple. In those instances, however, in which the donor of the estate-tail had merely a determinable or defeasible fee, the effect of a recovery by a tenant in tail, will, upon principle, be merely to give an interest commensurate with that ownership: for as a recovery by a tenant in fee (c) will not bar an executory devise or springing use annexed to that estate, it is absurd that the recovery of a tenant in tail, created out of this determinable fee, should have the effect to give an interest which could not have been acquired by the donor of the estate-tail. The same reason applies to an estate tail derived out of a qualified or defeasible estate in fee. In short, the recovery cannot produce any other effect than to acquire that extent of ownership which belonged to the donor of

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(b) *Benson v. Hodson*, 1 Mod. 108. 2 Lev. 29.

Page v. Hayward, 2 Salk. 570. Pigot on Recoveries, 176.

*Driver v. Edgar*, Cowp. 379.

*Gulliver v. Ashby*, Burr. 1929.

(c) *Pells v. Brown*, Cro. Ja. 590. Palm. 131, 2 Fearne. Pigot, 134.

the estate-tail. Let it be remembered, however, that though the owner of an estate in fee, subject to an executory devise or springing use, cannot bar such future interest, a recovery by tenant in tail will bar an executory devise or springing use annexed to his estate. Such executory devise or springing use falls within the terms condition subsequent, or collateral limitation (*d*).

In a thing created *de novo*, as a rent, in which there is merely an estate-tail, without any remainder over, a recovery suffered of the rent by tenant in tail, though it may bar the estate-tail, cannot give to the rent a continuance beyond the period limited by the original grant (*e*). This point illustrates and seems in some degree to prove the proposition now under consideration.

When, however, the estate-tail in a rent is derived out of a fee-simple already existing in the rent; or the estate-tail is limited on its first creation with remainders over, the recovery of tenant in tail, duly suffered, will acquire the whole dominion or ownership in the rent to the extent of the estate-tail and remainders (*f*). The objection that there can

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(*d*) Page & Hayward, 2 Salk. 570, already cited, *supra*, p. 2.

(*e*) Chaplin v. Chaplin, 3 P. Williams, 239. Butler's Co. Litt. 298, a. n. 2.

(*f*) Smith v. Farnaby, Carter, 58. Siderfin, 285.

Weeks v. Peach, Lutw. 1218.

not be a remainder of a thing created *de novo*, no longer prevails (g).

To bar an estate-tail and remainders and reversions, &c. expectant on that estate, is the general use of a recovery; and in its operation, as barring the estates of persons in remainder, it is peculiarly the assurance of tenant in tail, and has this effect only when it is suffered by the donee for the time being of that estate.

The assignee of tenant in tail is not qualified to suffer a recovery with effect (h). Nor is a person who has an estate to him and his heirs, so long as another shall have heirs of his body (i), for he has a determinable fee, and not an estate-tail.

Nor can the *issue* in tail with effect suffer a common recovery in the life-time of the ancestor, so as to bar the estate-tail or remainders, or do more than bar themselves by estoppel.

Sometimes this assurance is used as a means of barring a title of dower (k), or aliening the freehold or inheritance, or some other interest of a married woman (l); but it is never,

(g) *Smith v. Farnaby*, and *Weeks v. Peach*, already cited.

(h) 2 Roll's Abr. 394. b. l. 40. Raym. 29.

(i) *Pigot on Recoveries*, 129. Sid. 202.

(\*) 2 Co. 74, 78. 10 Co. 43.

*Eare v. Snow*, Plow. 504, 514. Pig. 67.

(l) *Ib.* and *Incliden v. Northcote*, 3 Atk. 430.

at least among correct practitioners, used for these purposes, unless one of the objects of the assurance is to bar an estate-tail. It may also operate as a conveyance by a person who has an estate of inheritance not being an estate-tail (*m*): It may extinguish a collateral interest, as a rent; or a lien, as a judgment; or a power, as a power of jointuring (*n*), or of appointment (*o*), or of charge (*p*), or to bring a writ of error (*q*).

In these particulars it partakes, according to the circumstances, of the nature and operation of a conveyance, or of a release; and sometimes it operates merely by way of estoppel or conclusion; and in these instances it must be considered as such conveyance, release, or estoppel, rather than a common recovery requiring the forms of a real action; and in this place it may be observed that the issue in tail, or those in reversion or remainder, not being parties, are not bound by estoppels or conclusions. Tenants in tail may bind themselves by estoppel as well as the owners of other estates. As recoveries do:

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(*m*) 3 Co. 5. Pig. Rec. 123.

Webb v. Hill, Cro. Eliz. 21.

Lockyer v. Palfreman, Style, 309. Pig. 198.

(*n*) King v. Melling, 1 Ventr. 225. 2 Levinz. 58. Pig. Rec. 135.

(*o*) Penn v. Peacock, Ca. T. Talb. 41.

(*p*) Duke of Chandos v. Talbot, 2 P. Wms. 605. Saville v. Blackett, 1 P. Wms. 777.

(*q*) Barton v. Lever, Cro. Eliz. 388. Moor, 365.

not operate by estoppel against the issue or those in reversion or remainder, a recovery suffered of the *land* will not bar an intail of a *rent* issuing out of the lands, as far as the issue or those in remainder or reversion are interested. But a recovery suffered of the *land* by a tenant in fee or for life of a *rent*, would *quoad* his estate extinguish the rent, and suffered by a tenant in tail, will bind himself. Nor will a recovery suffered by a person who has a contingent or executory interest in tail, either under a contingent remainder or executory devise (*r*), bar the intail or remainder; and yet suffered by a person who has an executory interest *in fee*, it will, by way of release or estoppel, bar his interest; and this estoppel will bind the person by whom the recovery was suffered, though he had an interest in tail.

When one estate-tail is derived out of another estate-tail, both estates-tail, or the right to both these estates, may centre in one and the same person; and in that case a recovery suffered by him, in which he shall be *vouched*, and vouch over, will bar both estates-tail (*s*), and consequently will confer an estate co-extensive with the ownership of the person by whom the original estate-tail was created. But a recovery suffered by

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(*r*) Pigot on Recoveries, 133.

(*s*) Manxell's case, 2 Flow. 8, b, 3 Co. 6.

him in which he shall be named tenant (*t*), and vouch over, will bar that estate only of which he is actually seised, without affecting the title under the original estate-tail. Sometimes, however, the original estate-tail may be revived; and the derivative estate-tail be defeated through the medium of the doctrine of remitter (*u*). Under these circumstances the title is to be considered precisely on the footing of the original estate-tail; and a recovery suffered, so as to bar that estate-tail, will enlarge the ownership into a fee-simple; admitting the fee-simple was in the person by whom the original estate-tail was created. From these observations it will be collected, that when there are two estates-tail, and one of them is derived out of the other, and both subsisting in different persons, the owner of the original estate-tail must be a party to the recovery, in order to gain the title to the fee-simple; and to bar both estates-tail, both tenants in tail must be vouched. Whether they are to be vouched jointly or severally will be considered in that division in which the necessity of a recovery with treble voucher will be the subject of observation.

An assurance by common recovery ge-

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<sup>no</sup> (*t*) Taltaram's case, 12 Ed. IV. 14. Pig. on Rec. 9. Bro. Abr. Tail. 32.

(*u*) Litt. s. 659, 660. Co. Litt. 37, b. (2)

nerally consists of two parts perfectly distinct:—

1st. Of the recovery which assumes all the forms of a real action; and is founded on the supposition of an adverse claim, and

2d. Of the recovery deed, which is, in form at least, partly a preparatory step to suffering the recovery, and partly a declaration of the uses of the recovery when suffered. Notwithstanding the recovery assumes the form of a real action, it is considered merely as a common assurance, and the courts take notice of it as such (*v*).

There are a variety of cases in which a common recovery is the only assurance which will complete the title. For example, a person who is tenant in tail, with remainders and reversions over to other persons, cannot, by his own act, and *ipso facto*, bar those remainders and reversions by a fine, or by any other means than a common recovery. These interests may be eventually barred by nonclaim (*w*), on a fine with proclamations; or by the statute of limitation (*x*). This is by force of certain statutes, not of the direct operation of the assurance.

(*v*) *Pelham's case*, 1 Co. 14, b. 3 Bl. Com. 351. Pig. on Rec. 26.

(*w*) H. 8.

(*x*) 20 Ja. I. c. 1.



## AND THEIR OPERATION.

Also a tenant in tail subject to a springing or shifting use, or conditional limitation; as an executory devise; cannot, even though he has the remainder or reversion in fee, bar this springing or shifting use or conditional limitation by any other means than this assurance: and, as will be collected from a former observation, tenant in fee subject to an executory devise or conditional limitation, &c. cannot, by a common recovery, or by any other means proceeding from himself; bar such executory devise or conditional limitation (y).

And wherever tenant in tail has also the immediate remainder or reversion in fee, *by descent*, though *prima facie* a fine would enable him to acquire the fee-simple in possession, and render his title, unless it can be impeached, marketable (z), it is his interest, except in very particular circumstances, as apprehension of death, &c. before the term, to suffer a common recovery rather than levy a fine. By means of the recovery his title will depend wholly on his estate-tail, and the remainder or reversion in fee will be immaterial to the further deduction of the title (a), while if he levies a fine, he will bar his estate-

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(y) *Pells v. Brown*, Cro. Ja. 590.

(z) *Sperling v. Trevor*, 7 Ves. jun. 497.

(a) *Tracts on Cross Remainders*, &c.

tail, convert the same into a base or determinable fee, and this fee will merge in the remainder or reversion in fee-simple, and all the charges and incumbrances (as judgments, annuities, &c.) affecting the reversion or remainder in fee, will be accelerated and become an immediate instead of being a remote charge on the possession. So also tenant in tail having the remainder or reversion in fee by descent, will become immediately chargeable with the debts of the ancestor, who was the owner of the remainder or reversion in fee-simple. Thus these incumbrances instead of being barred, as they may be by a common recovery, will become an available charge.

On this subject the student should read the cases of *Symonds v. Cudmore* (b), *Kynaston v. Clarke* (c), *Shelburne v. Biddulph* (d), and also the observations in the tracts on cross remainders and alienations by tenants in tail, with great attention.

On the effect of common recoveries in barring remainders, conditions, and collateral limitations, the cases of *Page v. Hayward* (e), *Gulliver v. Shuckburg Ashby* (f),

(b) 4 Mod. 1, 2. Salk. 332. 1 Show. 370.

(c) 2 Atk. 204.

(d) 4 Bro. P. C. 504.

(e) 2 Salk. 570.

(f) 4 Barr. 1929.

*Driver v. Edgar* (g), and *Benson v. Hodson* (h), should be closely studied.

On the authority and reasoning of the determination in *Symonds v. Cudmore*, *Kynaston v. Clarke*, *Shelburne v. Biddulph*, it should be understood as a general rule, to be observed in practice, that a tenant in tail, who is merely tenant in tail, or who has the reversion or remainder in fee by descent, should suffer a common recovery, in preference to levying a fine; and even if he levies a fine, so as to guard against the accident of his death, before the commencement of the term, the fine should be levied for the declared purpose of making a tenant to the writ of entry; and to the intent of suffering a common recovery: so that the fine and common recovery, if one shall be suffered, may form part of the same assurance (i), and thus prevent, as it is apprehended they will do, the merger of the ownership under the estate-tail, in the reversion or remainder in fee; or, in other words, make the title wholly dependent on the ownership under the estate-tail.

And in some cases, especially when there are heavy debts, or there is the apprehension

(g) Cowp. 370.

(h) 1 Mod. 108.

(i) *Ferrers and Curson v. Ferrer*, Cro. Ja. 613.

*Goodright v. Mead*, 3 Burr. 1703.

*Selwin v. Selwin*, 2 Burr. 1131.

of judgments, &c. affecting the reversion or remainder in fee, and a fine is to be levied, it will be a caution well worth the expence, previous to levying the fine, to make a demise for years to be created in the name of a trustee, upon trust to attend the inheritance; and to protect the possession during the continuance of the ownership under the estate-tail; for the term being supplied partly from the estate-tail, and partly from the remainder or reversion in fee, will not be affected by the subsequent merger, should it take place, of the estate-tail; but would protect the possession during the time of the estate-tail, viz. till the failure of the issue inheritable under the estate-tail.

The demise generally used to prevent a forfeiture, in those cases in which it is doubtful whether the party is tenant for life or tenant in tail, and of which there is a form in the appendix, would, with very little alteration, answer this purpose; but it never occurred to the writer of these observations to remark that this caution has ever been adopted in practice.

*Observations on the Operation of Fines as distinguished from Recoveries.*

To elucidate the remarks on the extensive operation of recoveries, as distinguished from fines, and to shew the application of these remarks to practice, a few general observations may be added in this place.

It is quite clear that a tenant in tail, merely as such, cannot make a good title to the fee-simple, without suffering a common recovery. A fine levied by him, and operating as a conveyance, will merely bar the estate-tail, and convert the same into a base or determinable fee (*k*), or, if it operates by discontinuance, then a fee-simple will be gained: but such fee-simple may be avoided by the action of those in reversion or remainder; or they may be even remitted to their estate by operation of law: but when a person who has an estate-tail, with an immediate reversion in fee, levies a fine with proclamations, the effect of the fine will be to bar the estate-tail, and convert the same into a determinable fee, and this determinable fee will merge in

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(*k*) *Mackell v. Clarke*, 2 Lord Raym. 778.

*Seymour's case*, 10 Co. 95.

*Doe v. Whitehead*, 3 Burr. 704.

*Doe v. Rivers*, 7 Term Rep. 276.

*Doe v. Wichelo*, 8 Term Rep. 211.

the fee-simple. The consequences are, 1st, that the title depends partly under the ownership of the estate-tail, and partly under the ownership of the reversion in fee; 2dly, the reversion, having become an estate in possession, the possession is immediately chargeable with all incumbrances which affected the reversion or remainder in fee. For this reason it is considered a rule of practice, by all sound lawyers, that a tenant in tail with reversion or remainder in fee by descent, should suffer a common recovery instead of levying a fine. And it certainly is the interest of every seller who has a title thus circumstanced, to suffer a common recovery, rather than rely on the operation of a fine. It is also the interest of the purchaser, that a common recovery should be suffered, so that the evidence of the title may depend wholly on the ownership under the estate-tail, instead of being deduced, as it otherwise must be, as well under the ownership of the reversion in fee, as of the estate-tail. It is, however, now settled by the case of *Sperling v. Trevor* (1), that a title derived by means of a fine levied by tenant in tail, with the reversion in fee by descent, is, *prima facie*, good; and a purchaser cannot object to it, for want of a common recovery, unless he can shew that

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(1) 7 Ves. p. 497.

the reversion in fee has been aliened or incumbered. However, though this shall not be shewn, he has a clear right to have a recovery suffered at his own expence. He has also a right, unless a recovery shall be suffered, to have the title deduced from each successive owner, who for the time being has been seised of the reversion in fee; and for this purpose to call for an abstract of the wills of such of them as have left wills appointing real estates, and for presumptive evidence of the intestacy (as letters of administration or the like) of such of them as are alleged to have died intestate; and to satisfy a purchaser on these points will frequently be attended with more delay, and in general with more expence than a common recovery; and for this reason, independent of the advantages which, in reference to the covenants warranting the title, arise to the seller from a recovery, it seldom, indeed very rarely among gentlemen of any experience, happens that a seller is advised to refuse a recovery, and place the title on the operation of a fine; and in many cases, and indeed in all cases of considerable property, a recovery is attended with less expence than a fine.

*General Observations continued.*

In this place, also, it may be observed, that a tenant in tail cannot, by his common recovery, or by any other means, bar leases, charges, &c. which are incumbrances on his estate-tail. All charges affecting him as tenant in tail will affect his ownership under the fee acquired from the estate-tail (m), nor can he bar any estate or interest prior to his estate-tail (n).

But the tenant of a remote estate-tail may, notwithstanding there are prior estates-tail, vested or contingent, suffer a common recovery with effect. The operation of this recovery will be to enlarge his own estate-tail, into a fee-simple, and thus bar all remainders and reversions expectant on his estate-tail (o).

It will, however, leave the prior estates, and among them estates-tail, if any, (unless they are destroyed as contingent remain-

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(m) Capel's case, 1 Co. 62, a.  
 Cholmley's case, 2 Co. 52, b.  
 Beck v. Welsh, 1 Wils. 277.  
 Benson v. Hodson, 1 Mod. 108.  
 (n) Pigot, 139. 2 Lev. 30.  
 Goddard v. Complin, 1 Ch. Ca. 119.  
 (o) 3 Co. 6, a.  
 Doe v. Halley, 8 T. Rep. 5.



ders) undisturbed; and at a subsequent period, a recovery may be suffered by the owner of the prior estate-tail, and the recovery thus suffered will enlarge this prior or intermediate estate-tail into a fee-simple, and as a consequence bar the fee acquired by means of the former recovery.

Nor can a tenant in tail by his recovery acquire an estate more ample than that which was vested in the person by whom the estate-tail was created. This point has already been urged. In case, therefore, the person by whom the estate-tail was created had a determinable or defeasible fee, the fee acquired, by means of the recovery, will be subject to this collateral limitation, or condition, &c. whilst it continues in force. Though no decision has been found to warrant this proposition, no doubt can reasonably be entertained on the point.

It remains only to observe that estates *pour autre vie*, or for several lives, do not admit of intails within the statute *de donis* (p). Though there are limitations of these interests to a man and the heirs of his body, such limitations do not create an estate-tail, barrable by recovery *as such*. They create merely a *quasi intail*, which, with the limitations over, may

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(p) *Low v. Barron*, 3 P. W. 262.

be barred by an ordinary alienation (*q*), as fine, lease, and release (*r*), bargain and sale, grant, surrender (*s*), or in equity by articles (*t*); and it should seem (for this point is not decided) by will (*u*).

And tenant in tail of the gift of the crown (*v*), for services performed (*w*), cannot bar either his issue, or the reversion or remainder in fee of the crown, while that reversion or remainder remains in the crown, for the protection continues only so long as the reversion or remainder in fee is in the crown (*x*).

The moment the crown parts with the reversion or remainder in fee, the estates-tail and other estates expectant thereon, lose the protection of this statute against being barred (*y*); and at this day the crown cannot alien the reversion or remainder in fee by any other means than an act of parliament.

But particular estates, derived out of the reversion or remainder of the crown, are

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(*q*) *Wasteney v. Chapple*, 1 Bro. Par. Ca. 457.

(*r*) *Duke of Grafton v. Hanmer*, 3 P. W. 266, note.  
*Norton v. Frecker*, 1 Aik. 524.

(*s*) *Baker v. Bayley*, 2 Vern. 225.

*Blake v. Blake*, 3 Cox's P. W. 19. n. 1.

(*t*) *Wasteney v. Chapple*, *supra*.

(*u*) *Doe v. Luxton*, 6 T. Rep. 293.

(*v*) Stat. 34, -35. H. VIII. c. 20. Co. Litt. 372, b.

(*w*) *Perkins v. Sewell*, 1 Black. Rep. 654. 4 Barr. 2223.

(*x*) Co. Litt. 372, b.

(*y*) Com. Dig. Estates, b. 31. Co. Litt. 372, b.

Earl of Chesterfield's case, Hard. 409.

within the protection of the statute so long as the crown retains the reversion or remainder<sup>(z)</sup>.

And by the prerogative of the crown, a reversion or remainder in the crown, either in fee or in tail, cannot be barred by common recovery<sup>(a)</sup>; but remainders to strangers may be barred whether they are prior or subsequent to the estate of the crown<sup>(b)</sup>.

Nor can a woman seised in tail by the provision of the husband, or any of his ancestors, or by his or their procurement<sup>(c)</sup>, bar the estate-tail, or the reversion or remainder, after the death of the husband, without the concurrence of the person next in remainder, or next inheritable. On this subject the following points have been decided. First, It extends to all cases in which the wife is tenant in tail, either alone<sup>(d)</sup>, or jointly with her husband<sup>(e)</sup>, whether the gift is to the heirs of both their bodies<sup>(f)</sup>, or to the heirs of her body, begotten by him<sup>(g)</sup>, and to all cases in which the intail proceeds from

(z) Com. Dig. Estates, b. 31. 8 Co. 77. Co. Litt. 372, b.

(a) Serjeant's Case, 2 Roll. Abr. 393.

(b) Ibid.

(c) Stat. of Hen. VII. c. 20.

(d) See the statute.

(e) Laughter v. Humphrey, Cro. Eliz. 524.

Queen v. Savage, Moor. 715.

(f) See the statute.

(g) Ibid.

the husband, or any of his ancestors (*i*), or the lands were purchased with his money (*k*), or partly with his money, and the gift is confined to his issue (*l*), or unless so confined the remainder or reversion is in favor of the husband, or some of his ancestors, or the settlement though in consideration of money of the wife, has marriage as the principal consideration (*m*).

But it does not extend to those cases in which the gift proceeds from the wife (*n*) or from her friends, or from a stranger (*o*), or the lands are purchased with the money of the wife, unless marriage is the principal consideration, nor to those cases in which she has an estate in general tail (*p*), that is to say, to the heirs of her body generally, with the remainder or reversion in fee to herself or a stranger (*q*).

It is also now settled that an alienation by the husband and wife jointly (*r*), is not restrained by the statute, though it is not within the express words of the saving clause. And after the death of the husband, she may

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(*i*) *Sharrington v. Strotton*, Plow. 300. 3 Rep. 50, b. Cro. Eliz. 513.

(*k*) *Palmer*, 217.

(*l*) *Foster v. Pittal*, Cro. Eliz. 2. 524.

(*m*) *Villars v. Beaumont*, Dyer, 186, a.

(*n*) *Eyston v. Studd*, Plow. 463.

(*o*) *Ward v. Walthew*, Cro. Jac. 173.

(*p*) *Foster v. Pittal*, Cro. Eliz. 2.

(*q*) *Simpson v. Turner*, Eq. Ab. 220.

(*r*) *Kirkman v. Thomson*, Cro. Jac. 474.

alien with the consent of the issue (*s*), if there are any, and if none, with the consent of the person who has the first estate of inheritance in remainder or reversion (*t*), but such consent must appear on record. So that in effect, though not in form, the recovery proceeds from the concurrence of the issue, or those in reversion or remainder, rather than from the wife. There is a difference between an alienation by a woman tenant in tail, of the gift of her husband, or his ancestors, and an alienation by a husband tenant in tail jointly with his wife or by survivorship. The widow cannot bar the issue; the husband may, even though the wife is living. By the stat. of 38 H. VIII. c. 28, those discontinuances only of the husband which do not bar the issue are provided for (*v*). As in all other cases tenant in tail can bar the remainders or reversions in fee expectant on his estate-tail, he can bar all leases, estates, and charges derived out of that remainder or reversion in fee (*w*), and all charges subordinate to his estate-tail (*x*).

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(*s*) 3 Co. 58. see the stat. s. 8, 9.

(*t*) Cro. Eliz. 524.

(*v*) 8 Co. 72.

(*w*) Capel's case, 1 Co. 60.

Goodright v. Mead and Shilston, 3 Burr. 1703.

Cheney v. Hall, Amb. 526.

Stapelton v. Stapelton, 1 Atk. 2.

(*x*) Eyton v. Eyton, 1 Bro. Par. Case, 151.

And a recovery duly suffered by a tenant in tail, after a conveyance or settlement made by him, will bar the estate-tail, and all remainders expectant on that estate, so as to give effect to the conveyance or settlement, as against his issue and those in remainder or reversion (x).

*Of Recoveries of equitable Estates.*

Recoveries may be divided into recoveries of the legal, and recoveries of the equitable ownership; these recoveries are generally distinguished as legal and equitable recoveries.

It is necessary to attend to this distinction only, for the purpose of introducing a few observations particularly applicable to equitable recoveries.

The general rule is that equitable recoveries must be suffered with the same ceremonies, and by the same persons, as equitable owners, whose concurrence would be necessary in case their estates were legal, instead of being equitable (y). It is also a rule that a recovery by the owner of an equitable estate, will not bar a remainder in the owner of a legal estate (z).

(x) See ante n. (x).

(y) North v. Champenown, 2 Ch. Ca. 63, 78.

(z) Salvin v. Thornton, Amb. 545, 699. 1 Bro. Ch. Ca. 73.  
Phillips v. Brydges, 3 Ves. jun. 120.

Boteler v. Allington, 1 Bro. Ch. Ca. 72.

That the recovery of an equitable tenant in tail may complete the title to the fee-simple, the remainders must be of the equitable ownership. So also there must be the concurrence of the person who has the equitable freehold (*a*). On the two latter propositions, it is observable, however, first, that if the person who is the trustee for the tenant in tail, is trustee of the fee-simple, and has the equitable remainder in fee, this remainder, though for many purposes extinguished in the legal estate, is considered by a court of equity as an equitable interest, distinct from the legal estate, and liable to be barred by the recovery of the equitable tenant in tail, notwithstanding the legal estate is in the trustee (*b*); consequently the general rule must be understood of an equitable estate-tail, with a distinct legal estate in remainder, vested in some other person.

Again, although the owner of the equitable freehold must concur in suffering an equitable common recovery, it is no objection that this equitable ownership arises from a legal estate; and therefore though A. is tenant for life of the legal estate, for his own benefit, a recovery suffered by an equitable

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(*a*) 2 Ch. Ca. 64.

(*b*) Robinson v. Cumming, Ca. T. Talb. 167. 1 Atk. 437.

tenant in tail, with his concurrence, will be good; since the analogy is sufficiently observed in obtaining the concurrence of the person who is the beneficial owner (*b*).

But it is quite clear that a recovery cannot be suffered by the owner of the legal estate-tail, without obtaining the concurrence of the person who has the legal freehold (*c*). And therefore if a recovery is to be suffered by the owner of the legal estate-tail, care must be taken to obtain the concurrence of the person in whom the legal estate of freehold resides; and if it is outstanding in a mortgage or trustee, such mortgagee or trustee must be a party.

When a recovery is to be suffered of an equitable estate-tail, and the tenant in tail has made a mortgage by way of conveyance in fee, or for an estate of freehold, it is doubtful whether a recovery afterwards suffered by the tenant in tail without the concurrence of the mortgagee, can be supported. On the one hand, it is contended that the mortgagee has in equity merely a chattel interest, by way of security for his money, and that the whole beneficial ownership, subject to the

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(*b*) *Phillips v. Brydges*, 3 Ves. jun. 120.

(*c*) *Salvin v. Thornton*, Amb. 545, 699. 1 Bro. Ch. Ca. 72, 73



payment of the money, remains in the mortgager; so that he is competent to make a good tenant of the equitable freehold. That he is competent is understood to be the opinion of a highly distinguished law character. On the other hand it is objected that the mortgage is, in equity, an alienation of the equitable freehold; so that the mortgagee has the equitable estate, subject only to redemption: and that the analogy of the rules of law, with regard to legal estates, must be applied to this case, so that the recovery cannot be good without the concurrence of the mortgagee. This was the opinion of a very eminent lawyer who now fills one of the highest departments in the profession.

In suffering a recovery, it would be highly imprudent to subject the title to an objection by neglecting to obtain the concurrence of the mortgagee. The point is important only in considering, whether a recovery suffered without this precaution will confer a title which can be safely accepted. There is no occasion on which it is more important that a full abstract of the title should be laid before the conveyancer for his advice, than that of preparing a recovery deed. It has happened more than once, that six recoveries have been suffered to bar the same estate-tail, and that five of them have been defective, for want of a good tenant to the writ of entry; and the sixth

recovery, though good according to the better opinion, involved the question whether a recovery defective as against the issue in tail, and those in remainder and reversion, for want of a good tenant to the writ of entry, is good as between the parties, so as to pass the estate by way of estoppel or conveyance, and supply a seisin to serve the uses declared thereof.

On the other hand, a recovery suffered by a tenant in tail of a legal estate, with the assistance and concurrence of the tenant of the legal estate of freehold, will certainly be good at law, notwithstanding the owner of the equitable freehold does not join in making the tenant to the writ of entry. Whether the trustee will not be guilty of a breach of trust, for lending his assistance to the tenant in tail to bar the remainders over, is a point not fully decided. Much perhaps must depend upon circumstances; but, in application to most cases, the recovery will be considered as good. Sometimes a question arises under other circumstances besides those already noticed, whether there is a good tenant to an equitable recovery. In one case the tenant of the legal estate, conveyed, at the instance and with the consent of the owner of the equitable estate, and it was the opinion of several gentlemen who were consulted on this point, and, among them, the late

Mr. *Fearne*, that this amounted to an alienation of the equitable estate ; so as to make a good tenant to the writ of entry for suffering the equitable recovery. In another case, the legal tenant of copyhold lands, surrendered to the use of the person named tenant in the plaint, for suffering a customary recovery, and the equitable tenant in tail was vouched and vouched over. The point which arose on the title was, whether the equitable tenant in tail, by being vouched, and by having procured the surrender to be made by his trustee, without having been party to the surrender, had given a right to the equitable estate of freehold to the intended tenant in the recovery. The title thus circumstanced was considered too doubtful to be accepted, but, individually, the gentlemen who considered this case thought there were strong grounds for supporting the recovery.

The like point arises, when a *cestui que trust* conveys his estate to one person for life in trust for another, as for the separate use of a married woman, with remainders over in tail : even in this case conveyancers do not feel that confidence on which they can implicitly rely. Some contend that the trustee has the equitable freehold ; while others maintain the opinion that the person who has the beneficial interest is solely the equitable owner, and that this person alone may make a good

tenant to the writ of entry, for suffering a common recovery: and this is the better opinion, for the supposed trustee has no estate at law, and it should seem, that even in equity he has no more than an *office*, and not any *interest* which can render his concurrence in a common assurance, like a recovery, in any wise necessary.

It is also observable, that a recovery suffered by a person who has the legal estate in fee, subject to an equitable intail in himself, may bar (d) this equitable estate-tail, and all ulterior interests.

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(d) *Marwood v. Turner*, 3 P. W. 153.

## ON THE PARTIES TO A RECOVERY.

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### THE PARTIES TO A RECOVERY ARE

- I. *The Demandant,*
  - II. *The Tenant,*
  - III. *The Vouches.*
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#### I. *Of the Demandant.*

THE demandant is merely a formal party, for the purpose of being the supposed plaintiff in the action on which the recovery is founded. It is of little consequence who is named demandant. Generally only one person is named. Sometimes two persons are named. Respecting the demandant, it is merely necessary that he should be alive when judgment is given on the recovery. In case he dies pending the proceeding, another demandant must be named, and the proceeding commenced *de novo*; but if the recovery deed is actually prepared and executed, there is no occasion for another recovery deed. A precedent of a deed pre-

pared on occasion of the death of a demandant will be found in the appendix. The deed was in that case prepared rather to meet the wishes of the parties, than from any conviction that it was necessary.

## II. *Of the Tenant.*

THE tenant is the person in whom the freehold resides, and against whom the lands are to be demanded by the plaintiff, who in real actions is called the demandant. By the freehold must be understood the immediate freehold (a).

For convenience, some gentleman residing near to, and personally attending the court in which the recovery is to be suffered, should be named the tenant. This practice will save the expence of a dedimus to take his warrant of attorney, which otherwise will be necessary (b). Sometimes two persons are named tenants. This is done to guard against the death of one tenant before the recovery is suffered. This caution can rarely be necessary in the common and ordinary practice of suffering the recovery in the first instance, and executing the deed, making a tenant to the recovery at a subsequent period. When

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(a) Essay on Est. chap. Freehold.

(b) Pig on Recoveries.

two persons are named tenants, and both are alive at the time when the recovery is suffered, both these persons must be named as tenants in the proceedings for suffering the recovery. Should only one of these persons (as has sometimes happened) be named, the recovery will be defective for a moiety, being the share of the person not named in the proceedings; for, as to his share, the recovery will be suffered without a good tenant to the writ of entry. So, if two persons are joint-tenants, and the recovery is suffered on a writ brought against one of them, the recovery will be defective for a moiety (c).

It is to be observed in this place, that it is not absolutely necessary that there shall be a *conveyance*, for the purpose of making a tenant to the writ of entry. The writ may be brought against the person in whom the freehold is vested, and a recovery suffered in this mode will be good, so far as the existence of a good tenant to the writ of entry is material. In some cases, it has been advised that the writ should be brought against the tenant: thus, where lands were given to one in tail, with a conditional limitation over in the event of his alienation, Mr. *Fearne* (d) recommended that he should be named as tenant in the re-

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(c) Marquis of Winchester's Case, 3 Co. 1.

(d) Post. Works, 336.

covery ; in other words, that the writ of entry should be brought against him, that the recovery itself might be the alienation, and bar the conditional limitation before it operated.

When the lands lie in different jurisdictions, as in England and Wales, or the courts of Westminster-Hall, and one of the counties Palatine, there may be one recovery deed; but it will be found convenient that the different lands in each distinct jurisdiction shall be conveyed to a distinct person as tenant.

In bargains and sales made under these circumstances, there should be different grants to the different persons to be tenants in the different recoveries.

In conveyances which admit of a declaration of use, the conveyance may be made to one person, as to the lands, &c. in one jurisdiction, to the use of the intended tenant in the recovery to be suffered in this jurisdiction; and as to the lands in the other jurisdiction, to the use of the intended tenant in the recovery to be suffered in that jurisdiction.

For example, the conveyance may be made of all the lands to A. and his heirs, to the uses hereinafter declared of and concerning the said lands respectively, (that is to say).

As to, for, and concerning all those, &c. situate in the county Palatine of Lancaster, or in the county of \_\_\_\_\_ in Wales,



or in Ireland, &c. "*mutatis, mutandis*" according to the circumstances, to the use of and his heirs, to the intent, &c. (here detailing the intent of suffering the recovery), and as to, for, and concerning all those, &c. if particular lands; or all other, &c. if the residue, to the use of and his heirs, to the intent, &c.

Even in cases of this description, one declaratory clause of the intent of suffering the recovery will suffice: so as a special clause, or declaration, shall be added, which will be to this effect, viz. that the several limitations hereinbefore made to the use of and respectively, and their respective heirs are made to them respectively, to the intent that they respectively may be tenants of the freehold lands, &c. conveyed to them respectively, and that each of them shall, as to the lands limited to his use, &c. permit and suffer the said (the demandant) to sue forth and prosecute.

*By what Means the Tenant to the Writ of  
Entry is made.*

This conveyance may be made by fine, by feoffment, by lease and release, by bargain and sale, or in short, any species of conveyance, proper to pass the immediate freehold.

Formerly it was the practice in all cases, in which the lands were the inheritance of a married woman, to have a fine from her and her husband, on the supposition that her freehold and inheritance could not be conveyed otherwise than by a fine.

The practice is now altered in this particular, and from several cases (e) it is clear, that the husband has the freehold in right of his wife, and that he alone may make a good tenant of the freehold by his conveyance. To this there is one exception, peculiarly applicable to equitable recoveries.

For in equitable recoveries, if the wife has the freehold, by way of separate estate, the husband has no seisin in her right, and the wife alone is competent to make a good tenant of the freehold.

On this point also the practice has varied:

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(e) 2 Roll's Abr. 394, pl. 4.

Robinson v. Cumming, Case T. Talb. 114. Atk. 473.

formerly it was the prevailing opinion, that the wife could not convey her equitable freehold, without a fine levied by her and her husband (*f*): but in *Barnaby and Griffin* (*g*) Lord *Attonley* (*h*), then master of the rolls, denied the necessity of a fine. The ground of his opinion was, that a feme-covert, who has the equitable freehold of lands, by way of separate estate, may alien that estate, and, consequently, transfer her equitable freehold to the tenant. The determination in this case is said not to have been satisfactory to the gentlemen of the Chancery-bar; and subsequent to that determination, two eminent conveyancers, in considering a case before them, thought a purchaser entitled to expect another recovery, although a recovery had been suffered, in which the wife alone made the tenant to the writ of entry. At the same time, the private opinion of one of these gentlemen was, that the determination was right: and, upon principle, it would be very difficult to impeach that determination; for, as the husband has no estate or interest in right of his wife, when there is a trust for her separate use, there is an absurdity, and an inconvenience,

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(*f*) *Fearne's Post. Works*, 330.

(*g*) 3 *Ves. jun.* 266.

(*h*) *Ibid.*

in requiring his concurrence; and as the wife has a *separate* estate, she is by the acknowledged rules of a court of equity, to be considered as a feme-sole, as far as she is made a feme-sole by the trusts declared in her favor: it is observable too, that as she cannot levy a fine without the concurrence of her husband, to require a fine from her is to give the husband a controul over the property; while it was intended, and it is the nature of the trust, to give the wife the power of enjoying, or aliening this property, without his interference or concurrence.

When the tenant to the writ of entry is made by *fine*, it is sufficient that the fine is levied, as of the same term (*i*) in which the recovery is suffered, and a fine levied by tenant in tail in a *prior* term, without any declaration of the use, will, by construction, be deemed a fine levied to the conusee for his own use, so as to keep the freehold in him, to make him tenant, even notwithstanding a long interval has elapsed, and there was, at the time of levying the fine, no declared intention of suffering a common recovery (*k*).

In short, the subsequent transaction rebuts

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(i) Phetyplace v. —, 3 Keb. 597.

(k) Altham v. Anglesey, Gilb. Eq. Cases. 2 Salk. 676.  
Pigot on Rec. 52.

the presumption of a resulting use in favor of the conusor.

Also a recovery will be good, when the tenant to the writ of entry is made by fine, notwithstanding the fine shall be reversed for error (l).

The fine remains in force till avoided; it follows, that the conusee has the freehold till that freehold is defeated, by avoiding the operation of the fine: so that the freehold continues in the conusee till the writ of entry is brought, and this is all the law requires; for as a *general rule* at common law, it was sufficient, that there was a good tenant to the writ of entry at any time before judgment (m), or at least before the return of the writ of entry, or the *summonas ad warrantizandum* (n).

In this particular there is a difference between a tenancy to a writ of entry, made by a fine voidable for error, and by a bargain and sale, which becomes void for want of enrolment in due time, as will be observed in the further consideration of this subject.

There is also a difference between a tenant to a writ of entry made by fine, and by feoffment. A fine is an acknowledgment of a

(l) Lloyd v. Evelyn, 2 Salk. 568.

(m) Lacy v. Williams, 2 Salk. 568. Pigot, 30.

(n) Pig. 22.

feoffment on record (o): but unless the co-nusor in the fine has the freehold, the freehold will not pass (p). A feoffment from its peculiar properties will gain a freehold, and make a good tenant to the writ of entry (q).

The tenant to the writ of entry is frequently made by *bargain and sale* inrolled; and the recovery grounded on the bargain and sale will be good; notwithstanding the inrolment takes place subsequent to the term in which the recovery is suffered (r); but on account of the peculiar properties of a bargain and sale, the recovery will be void; or rather voidable, unless the bargain and sale, though it is now admitted that it passes the freehold before inrolment, shall be inrolled in due time, namely, within six lunar months (s).

These observations suppose it to be essential, that the instrument, in the form of a bargain and sale shall operate in that mode. Should circumstances allow of the operation

(o) 2 Black. Com. 248.

(p) *Dormer v. Parkhurst*, 3 Atk. 135.

(q) *Pigot*, 41. Co. Litt. 330, b.

*Taylor ex dem. Atkyns v. Horde*, 1 Burr. 60. 5 Bro. Par. Cas. 247, is to the contrary.

(r) *Hynde's Case*, 4 Co. 71. Fig. 56.

(s) *Mallery v. Jennings*, 2 Inst. 674. *Shep. Touch. 226.*  
*Lellingham v. Alsop*, 2 Inst. 675.

of the instrument in a different mode; for example, as a *grant*, so as to pass the freehold; or as a surrender, so that the immediate freehold may be in the person named as tenant, resort may be had to that construction, to support the operation of the deed, and, through its medium, the validity of the recovery. In all cases of this sort, it is sufficient that the freehold was in the tenant at the time when the recovery was suffered; or appears to have been in him during that term; and the point to be regarded is, whether the deed under consideration, had by any, and what mode of operation, the effect of giving the tenant a title to the *immediate* freehold.

When a recovery is suffered of lands of *considerable value*, or of lands intended to be sold in *parcels*, it is prudent to have the tenant to the writ of entry made by bargain and sale, or at least by some deed inrolled, so that future purchasers may, by referring to the inrolment, and, if necessary, taking an office copy, have complete evidence of the validity of the recovery; and that the owner may not, on a sale in parcels, be bound to give copies of the recovery-deed to the purchasers (*t*). A fine is sometimes levied with this view.

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(*t*) See *infra*, chap. on Bargains and Sales.

It is agreed that bargains and sales give merely an use executed into estate by the statute for transferring uses into possession (u). On this account no use can be declared of the seisin of the bargainee, since such ulterior use is an use upon an use (w).

These observations are not applicable to uses declared in a bargain and sale, of a recovery suffered, or to be suffered. Since the uses are to arise from the seisin of the recoverer, and not from the seisin of the bargainee (x). And the rule that a use cannot arise on the seisin of a bargainee is confined to bargains and sales, to operate through the medium of the statute for transferring uses into possession (y).

Bargains and sales, which pass a common law seisin, do not fall within the scope of this rule, as will be shewn more fully in the chapter on bargains and sales.

When the tenant to the writ of entry is made by any other means than a fine, or bargain and sale inrolled, all that is necessary is to take care that the conveyance is sufficient, in point of law, to transfer the *immediate freehold* to the intended tenant.

Thus, in the instance of a feoffment, there

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(u) 27 H. VIII. c. 10.

(w) Tyrrel's Case, Dyer, 155, a, and 37.

(x) Web v. Nect. Hill, Cro. Eliz. 21.

(y) 27 H. VIII. c. 10.



must be livery of seisin ; in case of a grant, there must be a remainder, reversion, or an incorporeal hereditament, in the instance of a release in enlargement of an estate, there must be an estate capable of enlargement : and these estates must be conveyed, at least appear to be conveyed, so as to vest the freehold in the person named as tenant, during the term in which judgment is given in the recovery.

In these and all other instances, if the deed cannot operate in the precise mode in which it was intended to have effect, it is to be considered whether it cannot operate with effect in some other mode. The general rule is "that the construction be such, as the whole deed and every part of it may take effect, and as much effect as may be to that purpose for which it is made : so as when the deed cannot take effect according to the letter, it be construed so as it may have some effect or other (z) ;" and this rule is highly favoured and receives a very liberal interpretation and extensive application (a).

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(z) Shep. Touch. 84.

(a) Roe v. Tranmer, Willes's Rep. 682. 2 Wils. 75.

*Who shall be a sufficient Tenant to a Writ of Entry, in Point of Estate.*

The law has carefully distinguished between those estates which are, and those which are not of a freehold quality: and as it is of the first importance, with a view to the validity of recoveries, and of general utility, to acquire a correct knowledge of the nature, gradation, and extent of estates; and as the author cannot, in his own opinion, render a more acceptable service to those, for whose use these observations are intended, than to take a comprehensive view of this subject; and offer such practical deductions as arise out of the same; he will fully discuss this learning, in the chapter on *surrenders*; or on *merger*, as connected with that head of the law. At present it will be sufficient to observe, that estates are divided into estates, 1st, of *freehold*, and 2d, not of *freehold*: Estates of freehold are again divided into estates which are of *inheritance*, and estates which are *not of inheritance* (b).

Estates which are not of freehold are merely *chattel interests*. Of this description

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(b) Essay on Estates, 114.

are, 1st, terms of years; 2d, estates by statute merchant, statute staple, and elegit; and 3d, other uncertain interests, as a devise to executors till debts paid (c).

By those chattel interests, no right to the freehold is conferred, and for this reason: when the person against whom the writ of entry is brought has merely a term for years, or any other interest less than the freehold, the recovery will be defective, and an estate to a man for 99, or any other number of years, *if he shall so long live*, is a mere chattel interest, and he can neither be, nor make a good tenant to the writ of entry (d).

In one instance, by the rules of common law, a termor for years might, by the mere act of law, without descent, have become the freeholder. This happened under the learning of *occupancy*, which cast the freehold on him (e).—That case is an anomaly. He was the tenant of the freehold by reason of the occupancy (f). Though his possession, under the term, was the cause of his occupancy, the term was totally disregarded in the conclusion, that he had the

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(c) Essay on Estates, 603. Chap. on Chattel Interests.

(d) Smith ex dem. Dormer v. Parkhurst, 3 Atk. 135. 2 Str. 1105.

(e) Co. Litt. 41. Hale's Notes. Pig. on Recov. 35. Harris v. Fielding, 1 Keb. 786.

(f) Hale's Notes to Co. Litt. 41, b. 1.

freehold. Had a stranger been found the occupier, he would have had the freehold as occupant.

By the statute law (g), the executors and administrators are substituted in the place of the general occupant: and Mr. Hargrave (h) observes, "the title by general occupancy is now universally prevented by the stat. of 29 Car. II. c. 3. sect. 12; and 14 Geo. II. c. 20. sect. 9."

There is one case in which, perhaps, there may, for a time, even at this day, be a freehold by general occupancy, namely, in the interval between the death of a tenant *pour autre vie*, who dies intestate, and the time of obtaining letters of administration of his effects. Without allowing a title by occupancy to exist, for the intermediate time, the maxim of the law, which so carefully guards against the *abeyance* of the freehold, will be infringed. Unless the law leaves the freehold open to occupancy during the intermediate time, the statute of 14 Geo. II. must receive the construction that it gives the administrator a title by relation: and this construction must proceed on the ground that no inconvenience will be produced, as administration can be obtained by a stranger,

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(g) 14 Geo. II. c. 20. s. 9.

(h) Har. Co. Litt. 41, h. note 5.

in case the party entitled shall, on being cited, refuse to take it.

Thus the freehold of the church will be in abeyance, till a successor to the parson shall be appointed (i); and on the death of the tenant *pour autre vie*, leaving the possession vacant, the freehold will be in abeyance till some one enters (k). The former hypothesis is most consonant with our system of tenures; Thus in the case of the birth of a posthumous child, the heir for the time being is allowed to take (l), and the statute of Will. III. (m) applies *only* to posthumous children, who are to take by purchase, on the death of their parent; and consequently are *in esse* to many purposes (n).

All estates of inheritance are estates of freehold. Estates of freehold, however, are not necessarily estates of inheritance.

Under the division of estates of freehold, may be classed,

1. The estate of tenant for his own life.

2d. For the life of another person, or *pour autre vie*.

Bd. For the joint lives of several persons.

(i) Co. Litt. 349, b.

(k) Ibid.

(l) Shelley's case, 1 Co. 93, b. Watkins' Descent, ch. 4. Bassett v. Bassett, 3 Aik. 207.

(m) 11 Will. III. c. 15.

(n) Doe v. Clarke, 2 H. Black. 401.

Millar v. Turner, 1 Ves. 67.

4. For a period which is circumscribed by, and may determine during a life or lives; as,—

- 1st, During widowhood.
- 2d, During chastity.
- 3d, While sole.
- 4th, Till the return of A. from Rome, and the like; of which a great variety of examples, with the circumstances that distinguish estates of uncertain duration, which are of freehold, from those which are of inheritance, will be found in the essay on estates (n).

And some of these estates of freehold may be transmissible to *heirs*, or heirs of the body; still, however, they are merely estates of freehold, and not of inheritance. The *heirs* are to take by special occupancy or designation, not by descent (o).

Estates of inheritance are,

- 1st, Estates in fee simple.
  - 2d, Qualified fees.
  - 3d, Determinable fees.
  - 4th, Fees subject to conditions.
  - 5th, Fees conditional, and
  - 6th, Estates-tail, in all their varieties (p).
- And whatever is the nature or extent of

(n) Chap. Estates for Life.

(o) *Low v. Burrton*, 3 P. W. 262.

*Grey v. Manock*, stated 6 Term Rep. 292.

*Doe v. Blake*, 6 Term Rep. 289.

(p) Essay on Estates, Chap. Fees.

the freehold, vested in the tenant, whether it is of the superior or inferior denomination, is of no material importance to the validity of the recovery. All that is regarded is, that the tenant shall have *the freehold*: no attention is paid to the circumstance, that the estate is absolute or conditional, indefinite or indeterminable. It will be sufficient, even though it should continue in the tenant only for an instant; as in case of a grant made *within the term* to A. and his heirs *till he shall be tenant of the freehold*. Though the freehold commences, and, as it should seem, determines in the same instant, under this grant, the rule of law, which requires that the tenant shall have the freehold before judgment is given, is satisfied.

*Who shall be said to have the Freehold.*

It must not be understood, that the law requires no more than that the tenant shall have *an estate* of freehold.—Any estate of freehold or inheritance would answer that description: he must have that estate which confers the interest, emphatically denominated *the freehold*; in other words, the immediate freehold, namely, the first of all the estates of freehold: for example, when A. is tenant for life, remainder to B. for life in tail, or in fee, B. has an *estate* of freehold, but A. has the *immediate freehold*: and it is he, or the person who claims under his conveyance, that must (to bar the estate-tail, &c.) be named tenant in the proceedings (q), unless indeed an end shall be put to his interest, by the surrender or merger of his estate: so as to accelerate the estate of the person in remainder or reversion; and thus confer on him the title to the immediate freehold.

Another conclusion to be drawn from these observations is, that the tenant must have

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(q) Pigot, 37.

Smith ex dem. Dormer v. Parkhurst, 3 Atk. 134.

2 Stra. 1105.



the estate of freehold. A mere contingent executory interest is no estate, and will not answer the description of an estate of freehold (r).

Whoever wishes to understand this subject in a scientific manner must pursue the learning of real actions. As an introduction to this interesting subject, the chapter on Freeholds in the Essay on Estates, will, it is hoped, be found of some use.

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(r) See Tracts on Cross Remainders, Index, vol. Executory.

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(s) Essay on Estates, p. 10.

*Who, in Point of Estate, &c. can make a sufficient Tenant to the Writ of Entry; and to what Extent in POINT OF SHARE.*

Any person in whom the freehold is vested, may convey it by a formal and efficient instrument, unless incapacitated by infancy, coverture, idiocy, or lunacy.

The freehold in all cases belongs either to one person *solely*, or to several persons jointly; or to several persons in common or *severally*: or to two persons as tenants by *intireties* (s). Thus there will be either a sole tenant of the freehold, joint-tenants, tenants in common, or tenants by intireties.

Again, persons are to be considered as having the freehold either in their own right, or in right of some other person.

When a person is solely seised, he alone may be, or may make, a tenant to the freehold of the intirety.

When several persons are seised of the freehold as joint-tenants, or tenants in common, neither of them can, by a conveyance, make a tenant of the freehold for more than his aliquot part. Nor can a tenant in common

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(s) *Essay on Estates*. Introductory chap. p. 46.  
 Grenoley's case, 8 Co. 71, b.  
 Beaumont's case, 9 Co. 138.

be considered as a good tenant for more than his particular share. As a joint-tenant cannot convey more than his aliquot part, so if the writ is brought *against him as sole tenant*, and he takes the defence on himself, there will be a good tenant to the writ of entry for his part only. Notwithstanding joint-tenants are seised *per my & per tout*, and joint-tenancy is only a plea in abatement (t), the want of the freehold for the remaining parts will, as to those parts, affect the validity of the recovery. The Marquis of Winchester's case was decided on this ground.

Sole tenancy is also a plea in abatement. But if the writ is brought against several, when one of them alone has the freehold, the recovery will be good (u).

Tenancy by intireties is peculiar to husband and wife, and arises from the legal notion of the unity of their persons (v).

In all cases of several tenants, it is important that each of these persons shall be, or shall convey to the person named as, tenant in the writ of entry, that the recovery may be good for his share.

(t) Booth's real Actions, 31.

(u) Earl v. Snow, Plow. 514.

(v) Litt. s. 291:

Essay on Est. 46.

As to joint tenancy and tenancy in common under limitations, conveyances to uses (w), and in wills (x), the freehold may vest in one person, or two or more persons; subject to a right of other persons who may come in time, or answer a given description, as: "all my children who shall attain 21 years of age," to take jointly, or in common, with them; so that the freehold may shift. In a case of this sort, it should seem sufficient, that the person who, for the time being, shall be intitled to the freehold, shall be named tenant to the writ of entry, or shall join in a conveyance to him; since the person named tenant to the writ of entry will have the freehold for the time.

But if these persons have an estate-tail, and shall suffer a common recovery in which they shall be vouched and vouch over, this recovery, it is apprehended, will, as to the estate-tail, or the remainders over, be binding only for those shares which shall be their proportion eventually, when the quantum of shares shall be ascertained, by a division between all

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(w) *Matthews v. Temple*, or *Sussex v. Temple*, Comb. 467.  
1 Lord Raym. 311.

Mutton's case, Dyer, 274, b.

Brent's case, Dyer, 239, b.

(x) *Oates v. Jackson*, 2 Str. 1172.

*Doe v. Perryn*, 3 Term. Rep. 484.

*Goodwyn v. Goodwyn*, 1 Yes. 226.

the persons who now are, or ultimately shall become intitled.

To illustrate these observations, I suppose a devise to be made to all the children of A. in tail, and there is only one child who suffers a certain recovery; and afterwards two children are born: this recovery will, in the first place, be good for the entirety; when another child is born, it will, at least as to that child, be defeated for a moiety; and upon the birth of the third child, it will be defeated so as to confine the operation of the recovery to one third part.

There is no decision on this point; for that reason, it may be questioned whether the recovery, though avoided in favor of the subsequent children, would also be avoided as against those in remainder or reversion. The better opinion, it should seem, is, that it will be avoided as against those in remainder or reversion; for by relation, and in the event which happened, the child by whom the recovery was suffered, was tenant in tail only of one third part of the lands. The present case must not be confounded with cases in which children, or other persons, are under like circumstances, to have estates tail, with cross remainders between them in tail. In the instance of cross remainders, the only children, in point of title, even eventually, an estate

tail in and throughout the intirety of the lands.

It has sometimes been questioned whether these springing interests may not be barred by the recovery of the person who has the vested estate-tail. The better opinion is that they may not; and so the point is considered in practice. These springing interests are not merely collateral. The lands, and the estate of the person who has acquired a vested interest, are subject to or charged with these springing interests, as concurrent rights.

Sometimes husband and wife have the freehold by moieties; sometimes jointly as joint-tenants; sometimes by intireties; and, sometimes the husband and wife are seized wholly in right of the wife.

When the husband and wife have the freehold as tenants in common, then the husband is solely seized in his own right, of his own moiety; and he and his wife are seized in right of the wife of the other moiety; and he, as seized in right of his wife, may pass the freehold of the moiety which belonged to her; and may, by reason of the seisin in his own right, convey the freehold of the other moiety. So when the husband and wife are joint-tenants or tenants by intireties of the freehold, the conveyance of the husband alone will pass the freehold; and consequently

he alone may make a good tenant to the writ of entry (y).

*A. fortiori*, this is the law when the husband and wife have the seisin merely in right of the wife (s).

In *Pigott*, 88, who cites 2 Inst. 342, which, however, is not material to this purpose, it is said lands are given to husband and wife, and the heirs of the body of the husband, remainder over; the husband alone suffers a recovery, wherein he is tenant to the præcipe, and vouches the common vouchees: this is no bar to the issue, or him in remainder; for the recompense cannot enure to the estate, the wife having a joint-estate with her husband, she cannot be a partaker of the recompense, because she was no party to the recovery; for the estate between husband and wife is an entire estate, and no moiety between them; so the husband alone no good tenant to the præcipe.

This case was rightly decided. The reason however, to which it is ascribed is not correct. The husband was a good tenant to the writ:

(y) *Robinson v. Comyns*, Cas. T. Talb. 164. 1 Atk. 473.

Cuppledike's case, 3 Co. 6.

Plg. Recov. 72.

Butler's Co. Litt. 326.

Gilb. Tenures, 108.

(s) *Robinson v. Comyns*, Cas. T. Talb. 164. 2 Roll. Abr.

but the objection was, and so it appears in *Pigott*, that his estate-tail was so circumstanced, that it was not barred by a recovery, naming him as tenant. He ought to have conveyed the freehold to the person named as tenant and to have been vouched; and even *Pigott* admits, that in this instance the recovery would have been good, had the writ of entry been brought against the husband and wife (a).

In support of the opinion that the estate-tail would have been barred by a recovery, duly suffered upon a voucher of the husband, and a voucher over by him, Mr. *Pigott* himself may be quoted as an authority. In page 67, he puts this case: If lands are given to husband and wife, and the heirs of the body of the husband, remainder to a stranger, and the husband discontinues by fine or feoffment, or grants the lands by lease and release, or deed of bargain and sale inrolled, and a writ of entry is brought against commoner, feoffee, or grantee, and he vouches the husband alone, who vouches the common voucher: this common recovery is good, and bars the estate-tail and all remainders, but not the wife's estate,

To all these cases one general observation may be applied. In such instance the recovery was defective, on the ground that

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(a) Flow. 514.  
Pigott on Recoveries.



it was suffered by the husband as tenant; and not as vouchee. A recovery suffered by him as vouchee would have been free from objection, so as the writ of entry had been prosecuted against some person in whom the freehold had been vested, by means of a conveyance made by him. Accordingly in *Cupptalkes case* (b); husband and wife were seised to them and the heirs male of the body of the husband, with remainder to the husband by descent in tail male, and the husband discontinued, and the writ of entry was brought against the discontinuee: and the husband wasouched, and he vouched over, and this recovery was held a good bar to the remote estate tail of the husband, and the remainder, &c. expectant on the estate. The language of the judgment, as reported by Lord Coke, is, "This recovery shall bind the remainder; for here was a lawful tenant to the *precipe*, and although Francis (the husband), who had the estate, be only vouched, and not Elizabeth (the wife), who had the joint estate with him, yet Francis coming in as *vouchee*, he comes in in priority of the estate-tail, and not of any other estate; and the recovery in value gave recompense to the tail which Francis had, and to the remainders over."

(b) 3 Co. 6.

Another distinction to be collected from the case in *Pigott*, p. 38, is, that when the husband and wife are seized to them as tenants by intestacies, and the heirs of the body of the husband, so that there is a joint freehold in the husband and wife; and the inheritance in the husband solely; this estate-tail is to be barred either by a recovery suffered by the husband and wife, jointly as tenants, or by the husband alone as voucher; so that, though the husband alone may make, he alone cannot, under these circumstances, be a good tenant to the writ of entry. Such is the conclusion from *Owen and Morgan's case* (c). The point will be more minutely examined in considering the doctrine of Voucher.

In practice, a question frequently arises, whether a mere trustee may, either alone, or with the consent of the cestui que trust, lend his assistance towards suffering a recovery. This question is more important when there is a declared trust for supporting contingent remainders.—It is agreed that the recovery will be good at law, and, though equity will not compel the trustee to join in the proceedings for suffering a recovery, the better opinion seems to be, they will not

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(c) 3 Co. 5, a.

3 Co. 6, b.

View of the Rule in *Shelley's case*, 87.

charge him with a breach of trust for giving his concurrence.

Trustees, however, are very cautious how they join in any acts which may affect the interests of third persons; and purchasers under titles so circumstanced feel considerable difficulty in being satisfied of their security.

Other points peculiar to equitable recoveries have been noticed under the division in which they are considered.

It remains only to be remarked under this head, that a *termor for years*, or other person having a chattel interest, cannot be a good tenant to a writ of entry. That there may be a good tenant to a writ of entry by his means, he must make a feoffment and gain the freehold by *disseisin*; the better opinion is, the feoffment of tenant for years will gain the freehold.

Indeed no doubt could have been reasonably entertained on this point, if the court of King's Bench, and afterwards the House of Lords had not decided the contrary in *Taylor v. Horde* (d).

Lord *Hardwicke* viewed the feoffment of a tenant for years, as acquiring the freehold (e), so does Mr. *Butler* in his excellent note to Co. Litt. 330, b: and it is hardly possible to

(d) 1 Barr. 30. Cowper, 689. 5 Bro. P. Cas. 247.

(e) 3 Atk. 140. 3 Atk. 339.

conceive on what principle of tenure the decision of *Taylor v. Horde* can be supported. To these observations it may be added that Mr. Pigott (5) admits, that though strenuous the principle be absolutely necessary in every common recovery, yet if it be by *disseisin* it is good in many cases. Lord Mansfield does not controvert this doctrine: the point on which he differs is that a tenant for years cannot by his feoffment gain the freehold by *disseisin*. Aware, however, that this argument rested on grounds which were disputable, he resorted to the common-law doctrine of *fraud*, and attacked the recovery in *Taylor v. Horde*, on that head.

And see *Lincoln College case*, 3 Co. 59.

And see *Lincoln College case*, 3 Co. 59.

(5) Pigott's Case, 10 Mod. 109.

*At what Time the Tenant must have the  
Freehold,*

By the common law, it was necessary that the tenant actually had the freehold at some time before the recovery was suffered, in other words, judgment given; and consequently that livery of seisin, when such livery was necessary, must have been made, or the deeds executed, &c. before judgment given (g). Now, by the statute law (h), it is sufficient that the deeds making the tenant to the *præcipe*, or writ of entry, *shall appear to be dated* in the term in which the recovery is suffered, although they are executed *after judgment* given, or even writ of seisin awarded.

By that statute it is recited, "that it has frequently happened, that the deeds for making the tenants to the writs of entry, or other writs for suffering common recoveries, have been lost, or that the fines or deeds, making the tenants to the said writs, have not been levied or executed till after the judgment given in such

(g) *Lacey v. Williams*, 2 Salk. 568, 1 Lord Raym. 227.  
(h) 14 Geo. II. c. 20.

“ recoveries, and the writ of seisin awarded,  
 “ by reason whereof great doubts have arisen  
 “ whether such recoveries, for want of pro-  
 “ per tenants to the writs, are good and ef-  
 “ fectual in law; to prevent such doubts for  
 “ the future, and in order to render common  
 “ recoveries more certain and effectual,” and  
 among other things it is enacted, “ that from  
 “ and after the commencement of this act,  
 “ every recovery already suffered, or here-  
 “ after to be suffered, shall be deemed good  
 “ and valid to all intents and purposes, not-  
 “ withstanding the fine, or deed or deeds,  
 “ making the tenant to such writ, should be  
 “ levied or executed after the time of the  
 “ judgment given in such recovery, and  
 “ the award of the writ of seisin as afore-  
 “ said, provided the same *appear* to be le-  
 “ vied or executed before the end of the  
 “ term, great session, session or assizes, in  
 “ which such recovery was suffered; and the  
 “ persons joining in such recovery had a suf-  
 “ ficient estate and power to suffer the same  
 “ as aforesaid.”

To bring a case within the provisions of  
 this act, care should be taken *to date* the re-  
 covery deeds on some day within the term.

The object of the act has by some been  
 supposed to have been, to make *the date or*  
*internal evidence of the deed itself* decisive of  
 the validity of the recovery, without allow-

ing any evidence to be given respecting the time of the execution, so that the recovery may be good, although the deeds are *executed after the term*; provided they are dated within the term. This practice cannot be safely adopted, unless it shall become indispensably necessary, from circumstances. In legal proceedings, the old maxim of *via trita, via tuta*, cannot be too implicitly observed.

To avoid all question on the construction of the act, the deed should be *executed*, as well as dated, within the term.

This caution originally suggested from principle, is now become necessary from experience. A gentleman, of the first eminence, has given an opinion that a title, depending on a recovery, cannot be safely accepted, unless the recovery deed is executed, at least before the end of the term, by those in whom the freehold resides. In his construction of the act, the words, "appear, &c." mean *appear in evidence*, and do not refer to the *internal evidence* of the deeds themselves. There still are strong grounds for trying to establish, whenever circumstances shall require it, the construction given to the words of the statute, by those who wish to make the internal evidence of the deed conclusive: and this construction becomes more obvious, when the object of the statute, and the nature of the provisions collectively, are considered.

This was a remedial law, made with a view to supply defects, and for the security of titles depending on recoveries; and it is not fair to conclude that in using the word "appear," the legislature adverted to the internal evidence of the deed, since by that alone a purchaser is guided, and by that alone he can be protected from fraud?

It must be admitted, however, that the recital renders this construction more difficult, than it is on the words of the enacting clause. On the recital it may be insisted in argument that the sole object of the statute was to remedy the defect of a delay to execute the deeds, &c. till judgment given, or writ of seisin awarded; and then with a qualification that the deeds should be dated, in short executed within the term.

It is to be remembered that a fine acknowledged in the vacation, and levied as of the preceding term, will support a recovery suffered in that term (i).

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(i) Lord Say and Sele's case, 10 Mod. 43,



*Instances in which a Recovery will be good, although the actual Freehold of the particular Lands is not in the Person named as Tenant in the Writ of Entry.*

In general the person in whom the freehold of each parcel of the land resides, either in his own right, or by means of a conveyance made to him for the purpose, by the different owners, ought to be named tenant in the writ of entry.

To this general rule there are three exceptions :—1st, At the common law, when lands, *parcel* of a *manor* are granted for life, or in tail, the reversion remains *parcel of the manor* (i). In this case, a recovery suffered of the *manor*, will include the lands of which the reversion is in the lord; or rather, and more correctly speaking, the *reversion*; for the recovery being suffered of the manor, and the reversion being parcel of the manor, the reversion passes inclusively (k); but had the lands been severed from the manor, so that they did not remain parcel of the manor, the

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(i) Litt. s. 690.

Co. Litt. 324, b.

Pig. on Recoveries, 50.

(k) Pig. Recov. 41.

Jenk. Cent. 311.

recovery would have been voidable, as to the reversion (*l*).

This instance owes its existence to the principles of tenure, and the nature of a manor. The reversion of the lands remains parcel of the manor; and the manor consequently includes this reversion: and whoever recovers the manor recovers a title to the reversion (*m*). So the person who recovers a manor, or to whom a manor is conveyed, gains a title, even to have lands which shall *escheat*; and they will pass by a will made before the *escheat*: for lands when *escheated*, come in lieu of the services, and are a consequence of seignory. But *freehold lands* held of a manor and purchased by the lord, do not become parcel of the manor (*n*). It is otherwise of lands of copyhold tenure, for they are not within the statute of *quia emptores* (*o*). And if the manor is leased for life, excepting an acre, &c. the acre is not parcel of the manor (*p*).

2d, The act of 14 Geo. II. c. 20, renders it unnecessary to procure the surrender, or

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(*l*) Co. Litt. 324, b.

(*m*) Pig. Recov. 45.

(*n*) Jenk. Cent. 232.

Lemon v. Blackwall, Skin. 102.

(*o*) 18 Ed. I.

(*p*) Co. Litt. 324, b.

Pig. Recov. 46.

concurrence, of persons whose estates depend on freehold leases, viz. *leases under rents thereby reserved*. After, reciting that “ several leases have been heretofore, and are  
“ hereafter likely to be made, of honors,  
“ castles, manors, lands, tenements, and hereditaments, for one or more life or lives,  
“ under particular rents thereby reserved,  
“ and to be reserved; and that procuring  
“ surrenders of such freehold leases, or  
“ the tenants thereof to join, in order to  
“ make tenants to the writs of entry or  
“ other writs for suffering common recoveries, frequently occasions great trouble,  
“ difficulty, and expence to tenants in tail,  
“ and the same cannot in many cases be obtained, by reason of the uncertainty in  
“ whom the legal estate of freehold under  
“ such leases are vested, and also by reason  
“ of the disabilities and incapacities of such  
“ lessees, or persons claiming under them,  
“ by means whereof purchasers and family  
“ settlements are often delayed, and may be  
“ in great danger of being defeated, if some  
“ proper remedy be not provided.”

The act enacts that, “ for remedy thereof,  
“ all common recoveries suffered or to be  
“ suffered in his Majesty’s court of Common  
“ Pleas at Westminster, or in any other  
“ court of record in the principality of Wales,  
“ or in any of the counties palatine, or in

“ any other court, having jurisdiction of the  
“ same, of any honors, castles, manors, lands,  
“ tenements, or hereditaments, without any  
“ surrender or surrenders of such lease or  
“ leases, or without the concurrence, or any  
“ conveyance or assurance from such lessee  
“ or lessees, or other person or persons claim-  
“ ing under such lessee or lessees, in order  
“ to make good tenants to the writs of entry  
“ or other writs, whereupon such recoveries  
“ have been, or shall be had or suffered,  
“ shall be as valid and effectual in law, to all  
“ intents and purposes whatsoever, *as if such*  
“ *lessee or lessees, or any other person or per-*  
“ *sons claiming under him, her, or them, had*  
“ *conveyed, or joined in conveying, or shall*  
“ *convey or join in conveying, a good estate*  
“ of freehold to such person or persons as has  
“ or have been, or shall become, tenant or  
“ tenants to such writs of entry, or other  
“ writs, whereupon such common recoveries  
“ have been or shall be suffered.”

And it is provided “ That nothing in this  
“ act contained shall extend, or be con-  
“ strued to extend, to make any common  
“ recoveries valid and effectual in law, un-  
“ less the person or persons intitled to the  
“ first estate for life, or other greater estate  
“ (in case there be no such estate for life in  
“ being) in reversion or remainder next after  
“ the expiration of such leases has or have,

“ by some lawful act or means, conveyed  
“ or assured, or joined in conveying or assuring,  
“ ing, or shall by some lawful act or means  
“ convey or assure, or join in conveying or  
“ assuring, an estate for life at the least,  
“ to such person or persons as has or have  
“ been, or shall become tenant or tenants  
“ to the writs of entry, or other writs, where-  
“ upon such common recoveries have been,  
“ or shall be suffered.”

From the exception it will be collected, that this act does not extend to persons who have estates of freehold, by act of law; as tenants by the curtesy, or in dower; or persons having estates for life under marriage settlements, wills, &c. or by any other means than leases *at reserved rents*.

This statute, in its positive and enacting part, is founded on the principle of the common law, in regard to lands granted for particular estates, when the *reversion* continued *parcel* of a manor. In practice, it was difficult to obtain the concurrence of these lessees; and though they or those in whom their estate is vested still are the persons against whom a writ of entry in a real *adverse* action, must be brought, it was perfectly reasonable to dispense with their concurrence in a common recovery, which is now merely a species of common assurance.

In *Goodtitle*, on demise of *Bridges v.*

Duke of *Chandos* (q), Lord *Mansfield* observed, " it is now fully settled and established, that tenant in tail, may, if he pleases, either turn his estate-tail into a fee, or alienate it for his own benefit by duly suffering a common recovery ; but he must have a sufficient estate and power to qualify him to suffer such recovery, he must either be the tenant in tail in possession, or he must have the concurrence of the freeholder who claims under the same settlements. This principle is adhered to by the statute of 14 Geo. II. c. 20. The tenant for life whose consent is necessary to the tenant in tail in remainder, to enable him to cut off the entail, is *not the lessee of the land* under a *beneficial lease* ; but the original tenant for life claiming under the family settlement, and having a life estate settled upon him prior, in order of succession, to the others remainder in tail."

These observations are introduced, for the purpose of remarking, that it is immaterial whether the first tenant for life has the freehold under the *same*, or a *different* settlement, or under any other conveyance or a will. At the common law, with the exception that

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(q) 1 Burr. 1072.

has been noticed, the person who had the freehold, under a *beneficial lease*, was the person whose concurrence was necessary; and though the statute has dispensed with the necessity of his concurrence, does it follow that his concurrence will not answer the purpose? Even when the reversion on leases for lives remained parcel of the manor, a common recovery could not have been suffered of the *particular tenements* vested in these lessees without their concurrence, although their reversion and services would have passed inclusively by a recovery suffered of the manor of which they were parcel. Before the conclusion can be drawn, that the concurrence of a tenant under a beneficial lease will not be sufficient, the statute of 14 Geo. II. must be construed to have made a material alteration in the law on this subject; and to have restricted the right of a tenant in tail, to avail himself of the concurrence of the person who, actually, and in point of law, is the freeholder. The act has no words of exclusion; it places the recovery under the remedial part of the act on the footing of a recovery duly suffered at the common law, thus allowing the inference, and even affording the illustration, that a recovery duly suffered, according to the rules of the common law, is to be supported.

The proviso is merely to controul the enacting part, and to shew, that tenant in tail, when he availed himself of the provisions of the act, was not to be competent to suffer a common recovery, unless he had the immediate estate-tail, or obtained the concurrence of the freeholder intitled to the receipt of the reserved rent.

In this place it may be observed that the necessity, at the common law, of the concurrence of the freeholder, though a mere beneficial lessee, or a usufructuary occupier in suffering recoveries, &c. in all probability, gave rise to leases for years, determinable on lives, so common in the western counties, as preferable to leases for life. Indeed another advantage resulting from this sort of lease is that renewals may be granted of additional interests, by way of *interesse termini*, so as not to affect the remedy for rent or benefit of the covenants under former leases, and a still further advantage is, that the renewal may be made without a surrender by mortgagees, trustees, &c. and the legal title under the subsisting term is left undisturbed.

And thirdly, recoveries will be good as between the parties themselves and their heirs, notwithstanding the freehold is not in the person named as the tenant to the writ of entry. Between these parties, and all who



claim under them, the recovery operates as a *conveyance*, and has the effect of an *estoppel*. On this point some further observations will be added, in considering recoveries, by estoppel.

~~THE END OF THE WORLD~~

*Regulations by Statute, concerning the Evidence, in Relation to the Tenant to the Writ of Entry.*

The statute of 14 Geo. II. c. 20, as has already been observed, has made recoveries good, notwithstanding the fine or deed making the tenant to the writ of entry, shall be levied or executed *after the time* of the judgment given in such recovery, and the award of the writ of seisin, provided the same *appear* to be levied, or executed, before the end of the term, &c. in which such recovery was suffered, and the persons joining in such recovery had ~~a~~ sufficient estate and power to suffer the same.

By the same statute, for the purpose of protecting purchasers from neglect, “ in entering recoveries of record, purchasers *bona fide*, and for a valuable consideration, “ and all claiming under them, *having been in possession of the purchased estate, or estates, from the time of such purchase*, shall and “ may, after the end of 20 years from the “ *time of such purchase*,” (not the time of suffering the recovery,) “ produce in evidence “ *the deed or deeds*, making a tenant to the “ writ or writs of entry, or other writs for “ suffering a common recovery, or common “ recoveries, and declaring the uses of a re-

“ covery or recoveries, and the deed or deeds  
“ so produced (the execution thereof being  
“ duly proved) shall in all courts of law and  
“ equity, be deemed and taken as a good  
“ and sufficient evidence, for such purchaser  
“ and purchasers, and those claiming under  
“ him, her, or them, that such recovery or  
“ recoveries was or were duly suffered and  
“ perfected, *according to the purport* of such  
“ deed or deeds, in case no record can be  
“ found of such recovery or recoveries, or  
“ the same should appear not to be *regularly*  
“ *entered* on record: provided always that  
“ the person or persons making such deed or  
“ deeds as aforesaid, and declaring the  
“ uses of a common recovery or recoveries,  
“ had a sufficient estate and power to make  
“ a tenant to such writ or writs as aforesaid,  
“ and to suffer such common recovery or  
“ recoveries.”

That this statute may apply, the deed must be sufficiently formal to shew, that the steps intended to be taken, for the purpose of suffering the recovery, were such as were proper for suffering an effectual recovery. The act, in effect, makes the deed evidence of the recovery, in those instances which are within the scope of the statute. Hence the object and the use of the clause which shews the intent of the conveyance, for making a tenant to the writ of entry, and details the

substance of the intended proceedings. In transactions then of considerable importance, in which security of title is more an object than economy in expence, the common form which details the order of the proceedings should be observed. This form, with a general notice of the variations which take place under different circumstances, will be added in the appendix. It may be proper also to observe that the deed is evidence of the regularity of the proceedings in those instances only in which there are not any proceedings to rebut the presumption, except that irregularities in the entries are disregarded.

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*Of Cases in which the Law does, and does not, admit of the Presumption that there was a good Tenant to the Writ of Entry.*

In some cases, the courts will presume the concurrence of the freeholder in the recovery; as when the possession has accompanied the title under the recovery for a long time (r).

Or where there has been *collateral* evidence, to raise the presumption of a surrender, by the person in whom the freehold was vested; as entries in the attorney's books of a surrender prepared and paid for (s).

But unless there are circumstances to raise the presumption, as possession under the recovery, or the like, the court will not presume a surrender (t).

And though a recovery, would, under circumstances, be presumed to be good, yet if the presumption is rebutted, by the production of deeds, which shew a defect of title under the recovery, by proving that

(r) *Green v. Proud*, 1 Mod. 117.

(s) *Warren on the demise of Webb v. Grenville*, 2 Stra. 1120.  
2 Burr. 1071.

(t) *Goodtitle on dem. Bridges v. Duke of Chandos*, 2 Burr. 1065.

there was not a good tenant to the writ of entry, the presumption will fail (v.)

The general outline of the doctrine of the presumption of the law, as it applies to this subject, is fully explained by Lord *Mansfield*, in giving judgment in the case of *Goodtitle ex dem. Bridges v. Duke of Chandos* (w). He said " Where a person has power to suffer a recovery, and thereby bar the estate-tail, *omnia præsumuntur ritè et solemniter acta*, until the contrary appears; and it is reasonable that it should be so. But if the contrary shall appear, there is an end of the presumption. This was the case of the Earl of *Suffolk's* recovery, upon a trial at bar in this court in Easter Term, 1747. There, the contrary did appear: and the presumption was thereby destroyed. There were blundering deeds actually produced, which appeared clearly to be wrong; and it was manifest, upon the evidence disclosed, that there was no good tenant to the præcipe. It was therefore impossible for the court, in that case, to presume that there was one."

" But if a man has power to suffer a recovery, that is a solid and reasonable

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(v) *Keene ex dem. Earl of Portsmouth v. Earl of Ellingham*, Stra. 1267.

(w) 2 Burr. 1971.

“ ground for presuming that all was done  
 “ rightly and regularly; unless something  
 “ to the contrary shall appear.”

“ So, where the freehold is in a trustee  
 “ for the tenant in tail himself, and under  
 “ his power and direction, it is a reasonable  
 “ and just cause for presuming that every  
 “ thing was regularly transacted.”

“ So, where the person, or persons in-  
 “ terested to object against the validity of a  
 “ recovery have had an opportunity to make  
 “ objections to it; but, instead of doing  
 “ so, have acquiesced under it, and not at all  
 “ disputed its validity; this is a presumption  
 “ that all was right and regular, foras-  
 “ much as they never did object to it.”

“ But there can be no presumption of the  
 “ nature of evidence, in any case, without  
 “ something from whence to make it; some  
 “ ground to found the presumption upon.  
 “ Whereas here is absolutely nothing from  
 “ whence to presume; no sort of ground to  
 “ build any presumption upon. The single  
 “ pretence, to any the least ground of pre-  
 “ sumption in the present case, can be only  
 “ this, that no tenant in tail, in remainder,  
 “ would suffer a recovery, without first get-  
 “ ting a surrender of the life-estate, in order  
 “ to make it valid and effectual.”

“ But even that ground (slight as it is) will  
 “ not hold in the case now before us; for it

“ does not all appear, upon the report of  
“ the judge, that Mr. *George Bridges* (who  
“ suffered the recovery in question) had the  
“ least intention whatsoever to include those  
“ particular lands in the recovery which he  
“ suffered, and had a full power in himself  
“ alone, to suffer, of all the rest of the  
“ estate, whereof he was at that time tenant  
“ in tail in possession. He was then in  
“ possession of the manor of Keynsham,  
“ and of other lands in Keynsham sufficient  
“ to answer the general description used in  
“ the recovery, relating to such part of the  
“ recovered estates as lay in Keynsham.  
“ He must probably know, or have been  
“ informed by his counsel or agents, that he  
“ could have no such power over the settled  
“ part, without obtaining a surrender of the  
“ life-estate. He might perhaps be satis-  
“ fied, that he could not obtain a surrender  
“ of the life-estate in these settled lands: or,  
“ he might have attempted to obtain it, and  
“ failed in such attempt.”

“ If the mere single fact of the remainder-  
“ man in tail suffering a recovery, was alone  
“ sufficient to ground a presumption of a  
“ surrender of the life-estate, it would be  
“ in the power of every remainder-man in  
“ tail to bar the estate-tail, notwithstanding  
“ the tenant for life should absolutely re-  
“ fuse to join with him in suffering a reco-



“ very. Therefore it is necessary that there  
“ should be facts and circumstances to  
“ ground a presumption of such a surrender  
“ upon.

“ Whereas, in the present case, it is so far  
“ from being reasonable to presume, that  
“ there was such a surrender from the  
“ jointress, in order to bar the estate-tail in  
“ remainder, and give the power of disposal  
“ to George, in prejudice to James Bridges;  
“ that there are, on the contrary, many rea-  
“ sons to induce a suspicion, that there was  
“ not such a surrender. She might have  
“ more regard for James than for George;  
“ she might have a friendship for James,  
“ and a dislike to George; she might think  
“ it wrong or unkind to hurt the reversioner;  
“ or even whim and peevishness might  
“ prevent her from interfering: there is no  
“ defining the various reasons she might have  
“ from hindering her surrendering her life-  
“ estate for such a purpose.

“ Mr. George Bridges being only tenant  
“ in tail in remainder, and the life-estate,  
“ under *the same settlement*, still subsisting  
“ at the time of his suffering the recovery, it  
“ is clear that he had no power to alien or to  
“ bar; and there is nothing from whence to  
“ presume a surrender of the life-estate, to  
“ enable him to do so.

“ If he had a power to bar or alien, then  
“ indeed no presumption could have been

“ too large, in order to prevent slips in legal forms and methods of conveyance, and effectuate the intention of a person who had a legal right to do such an act.

“ The act of 14 Geo. II. c. 20, means to preserve the same negative to persons claiming under the family settlement as they had before.

“ And no argument can be drawn in the present case, from length of time; because the jointress died but in 1759; and the ejectment was instantly brought.”

On another day “ his lordship said, he had looked into his own notes of the case of *Warren*, on the demise of *Webb*, against *Greenville*, where the recovery was of 40 years standing; and the court did lay it down, in that case, “ *That after a recovery of 40 years standing, they would, without any other circumstances, presume a conditional surrender to have been made by the tenant for life; and they relied upon 1 Vent. 257, and Mr. Piggott's Book, p. 1.* But his lordship observed, that there are other circumstances, in the case in *Ventris*, and there is nothing in *Pigott* to justify his general position. And he added, that in the case then at the bar, the court did (as he had taken it down) admit as evidence the entry in the attorney's book, as had been mentioned. He said he was rather more strongly of

“ opinion than he was yesterday, ‘ That in  
 “ the present case, there is no ground for a  
 “ presumption that there was any surrender  
 “ by the tenant for life.’ Here are two par-  
 “ ticular reasons against making any such  
 “ presumption. One is, that there does not  
 “ appear to have been any intention in the  
 “ remainder-man in tail, to suffer a recovery  
 “ of these particular lands: the other is,  
 “ that here was no possession at all, under  
 “ this recovery; but, on the contrary, the  
 “ ejectment was brought, and the validity  
 “ of the recovery put into litigation, imme-  
 “ diately after the death of the tenant for  
 “ life.

“ If the eldest son, who had a remainder  
 “ in tail under a family settlement, should  
 “ privately suffer a common recovery, and  
 “ his father live many years afterwards; it  
 “ might as well be argued, that length of  
 “ time from the date of the recovery should  
 “ induce a presumption that the father sur-  
 “ rendered his estate for life.

“ And his lordship declared himself as  
 “ clear, that if there had been a long posses-  
 “ sion by the tenant in tail, after the death  
 “ of the tenant for life; though such a pos-  
 “ session might be ascribed to the entail,  
 “ the presumption ought to have been made  
 “ upon the ground of acquiescence under it,  
 “ and the probability arising therefrom, that

“ the parties knew that the recovery was not defective.

“ His lordship further added, that he would have it understood, that possession of the tenant in tail, after the death of the tenant for life, does leave a ground of presumption that there was a surrender. But in the present case, here is no possession after the death of the tenant for life: the ejectment was brought immediately.”

To these observations it may be added, that the strongest possible ground for the presumption of a surrender is, that the tenant in tail *had the possession* at the time when he suffered the recovery.

The next degree is, that though the tenant was not in fact actually in possession at the time of suffering the recovery, the possession was afterwards held in opposition to the tenant for life, the issue in tail, &c.—In short, the former is the presumption arising from a fact,—the latter from acquiescence.

Any act done by the tenant for life, as owner, subsequent to the recovery, rebuts the presumption of a surrender (x). In *Barley's* case, the person by whom the recovery was suffered had accepted a lease derived under the title of the jointress: so that there

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(x) *Haines Barley's case*, 5 Mod. 210.

was an acknowledgment on his part that the estate for life was continuing. And by the stat. 14 Geo. II. c. 20, it is provided, that every recovery already suffered, or hereafter to be suffered, shall, after the expiration of twenty years, from the time of the suffering thereof, be deemed good and valid to all intents and purposes, if it appears, upon *the face of* such recovery, that there was a tenant to the writ, and if the persons joining in such recovery had a sufficient estate and power to suffer the same, notwithstanding the deed or deeds for making the tenant to such writ should be lost, or not appear.

This act does not extend to any case in which the deeds making the tenant, are produced. It merely applies to those cases in which the deeds making the tenant, &c. are lost:—so that if the deeds are in existence, and produced, they may defeat the operation of a recovery, which otherwise would have been presumed to have been good.

For this reason a purchaser will not accept a title depending on a common recovery, without great caution, unless the deeds are produced, since he has no certainty of the uses, &c. and since he runs the risk that the deeds, if produced, might vitiate the title.

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*Of Recoveries good by Estoppel, without a good Tenant to the Writ of Entry: and of the Necessity of the Concurrence of a Tenant in a former Recovery, in a second Recovery, or the Deeds preparatory thereto:—with Observations, by Way of Caution, to guard against the Inconvenience sometimes experienced from the present Practice,*

A recovery suffered by a tenant in tail, without a good tenant to the writ of entry, is voidable by the issue in tail, and those in remainder or reversion. It is voidable only, not void. At least, this is the conclusion which it will be attempted to establish; and a recovery suffered by a person who has the inheritance, not intailed, will be good as against himself and his heirs; although the freehold is not vested in the person named as tenant to the writ of entry.

But it is apprehended that a recovery suffered by tenant in tail, upon a writ brought against a person not tenant of the freehold, will be binding on him, and continue in force till avoided.

In the Marquis of Winchester's case (y), the person by whom the recovery was suffered had the freehold jointly with Anne Mills,

and also the inheritance in tail, and it was agreed, that for the moiety of which Anne Mills was tenant for life, the recovery was not any bar, either to the estate-tail, which Lionel (the person by whom the recovery was suffered) had expectant on the estate of Anne Mills, or to the remainder of Henry, because, that for this moiety, Lionel was not tenant to the præcipe; but the recovery had operation against him by estoppel and conclusion, which shall not bind the issue in tail, who claimeth *per formam doni*.

So in *Owen and Morgan's* case, (z) in which husband tenant by intireties with his wife had suffered a recovery, as tenant, without the concurrence of his wife, it was agreed that the recovery, as to the estate of the husband, took its effect by estoppel and conclusion.

And in *Lincoln College's* case, (a) though a recovery was deemed defective against the issue in tail, it was considered to bar the party himself, so that he could not enter into the land.

And in *Say and Sele's* case (b) the language of the court was, that common recoveries, although there are no tenants to the præcipe,

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(c) 3 Co. 5.

(a) 3 Co. 69.

(b) 10 Mod. 40.

are good by way of estoppel, against the parties who suffer them, though not against remainder-men, strangers, &c.

And in *Webb v. Nect. Hill*, (c) a bargain and sale was made, and a recovery suffered to uses, by a person seised *in fee*, in remainder, expectant on an estate of freehold. Two points were moved, first, if the uses expressed in the indenture of bargain and sale were good: 2d, If the recovery suffered against him in reversion, when the freehold was in a stranger, shall bind the reversioner and his heirs? And the court held clearly, as to the first point, that the limitation to the uses, as this case was, was good. 2d, That the recovery was good against him in the reversion and his heirs, and they commanded judgment to be entered accordingly.

So in *Shelley's case* (d), it was said, if the tenant in fee-simple make a lease for life, and suffer a recovery, he and his heirs are forever concluded; but if the tenant in tail be seised of a reversion expectant on an estate for life, and have judgment to recover over in value, yet his issue shall avoid the recovery, for he shall not be estopped, because he claimeth *per formam doni*,

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(c) Cro. Eliz. 21,

(d) 1 Co. 96.



In *Barker v. Keate* (e), North, Chief Justice, observed, that if a real action be brought against A. who is not tenant to the *præcipe*, and a recovery be had against him, the sheriff can turn him out who is in possession; but if he, who is not in possession, come in by voucher, he is estopped to say afterwards, that he was not party to the writ, so that he who is bound must be tenant or vouchee, or claim under them.

These are the leading authorities to be met with on this point. They are summed up by Mr. *Piggot*, (f) who has given the points of difference, in these terms: If there be a tenant for life, remainder in tail, remainder in fee, if he in remainder in tail suffer a common recovery, it bars not the entail, because no tenant to the *præcipe*; but if he in remainder in fee suffers a common recovery, that bars his heirs, as has been said before.

These observations lead to some important conclusions in practice, applicable to cases in which a recovery has been suffered by tenant in tail; and the same is voidable, for want of a good tenant to the writ of entry.

They also lead to some observations respecting the practice of requiring that the person, to whom tenant in tail has conveyed, preparatory to a recovery afterwards suffered, and which is defective for want of the imme-

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(e) 2 Mod. 249.

(f) Page 37.

diate freehold in the tenant, shall be either the tenant in a new recovery, or shall join in making the tenant to that recovery.—

*First*, Sometimes the deed contains *more parcels than the recovery*. In this instance, unless the recovery shall be amended, it is clear that the freehold of the lands, not included in the recovery, remains in the person named tenant, and, of course, on suffering another recovery, a conveyance must be obtained from this person or his heirs, or a writ of entry must be brought against him or his heirs. This is universally and very justly, the practice. The necessity of this practice might be prevented by an express declaration to this effect: (a) “ *Provided always* “ *and it is hereby declared, &c. that if the* “ *said, (the tenant) shall not on or before* “ *the day of pay to the said his* “ *executors, or administrators, the sum of* “ *100,000l; then, and in that case, such, and* “ *so many and such parts, if any, of the mes-* “ *suages, &c. as shall remain vested in the said* “ *(the tenant,) after the said day of* “ *by reason of any defect in the said intended* “ *recovery or otherwise; shall from and after* “ *the said day of remain, continue, and be,* “ *&c. And that the said (the tenant) and* “ *his heirs shall stand and be seised, &c. and* “ *that these presents, &c. shall operate and enure* “ *to the uses, &c. hereinbefore limited, ex-* “ *pressed, and declared † and concerning the*

*" messuages, &c. which shall be, or are intended  
 " to be comprised in the said recovery, &c."*

This declaration will operate as a shifting use, even though the conveyance is to the use of the tenant in fee; so as the conveyance is made to operate through the medium of the statute for transferring uses into possession. Such a limitation is not admissible into a bargain and sale, to operate as such, under the statutes of uses and involvements.

*Secondly,* Sometimes a recovery is suffered by a person who has merely an estate-tail in remainder, after an estate of freehold, without obtaining the concurrence of the freeholder. In this case, as has already been observed, the recovery is considered as voidable, and not as merely void.

During the continuance of the freehold in the previous tenant for life, another effectual recovery cannot be suffered without his concurrence; but, with his concurrence, an effectual recovery may be suffered, without calling on the tenant in the recovery to join in the conveyance; but even then, if the former conveyance made to the tenant passed the fee, the title, independant of any question on the validity of the recovery, will be exposed to the objection, that the *age of estate* of inheritance is in the person to whom it was conveyed, for the purpose of making him tenant to the former recovery.

When the defect in the recovery is to be supplied, after the previous estate of freehold has determined, it is the practice to require, that the tenant in the former recovery, or his heirs, or devisees, if any, shall be tenant, or tenants, in the new recovery; or that he or they shall join in a conveyance, for making a conveyance to that recovery; nor, with a view to objections by other counsel, is it safe, in preparing recovery deeds, to forego this caution, when there is an opportunity of obtaining the requisite conveyance.

But whenever it shall become necessary to support a title, on an adverse litigation, merely on account of the want of such conveyance, it may be contended, and, it should seem, with great chance of success, that the former recovery was good, as between the parties; that the estate conveyed to the tenant was drawn out of him by the operation of the recovery; that the declaration of the uses governs the legal title as between these parties. To this reasoning it would possibly be objected, that the issue in tail, and those in remainder, are not bound by estoppel. This, as an abstract proposition, is not denied, nor will it affect the conclusion that has been offered. A recovery, good as between the parties, may be voidable, as against the issue, &c. because they are not bound by estoppel.—But although they are not bound by the estoppel of the recovery, it by no means follows that

the conveyance is not good till avoided, so as to govern the legal title to the freehold. On the contrary, the conveyance of tenant in tail has, as against himself, precisely the same operation as a conveyance by tenant in fee has against that tenant.

A conveyance by tenant in tail, by lease and release, by feoffment, by fine without proclamations, &c. is an effectual conveyance by him, of a base fee, or of a defeasible fee; and consequently of the freehold; although it does not bind the issue. It operates, however, against the issue so far, that they must make their *entry*; or, if there is a discontinuance, bring their *action* to defeat the estate: and the person in whom the freehold resides under this assurance, is the person who must be considered as the tenant whom they are to sue.

The same reasoning, and the principles on which it is grounded, prove that when the freehold passes, as between the parties, by way of conveyance, it must pass as against all mankind: and indeed there is an absurdity in supposing the same person to be tenant of the freehold, as against all mankind, except the issue in tail, and those in remainder: more especially, as it is of no consequence to the issue, &c. who is the tenant.—All that is necessary for their sake is, that there shall be a person on whom their

entry may be made, or against whom their action may be brought (g).

Besides, as in point of law, the person deriving a title under this imperfect, or voidable conveyance, is the person against whom the issue must bring their action, should they resort to an action to establish their right; this seems incontrovertibly to prove that this person has the freehold.

Since these observations were first dictated, this point has been fully considered on a case which arose and called for its application in practice. On that case, the reasoning offered in support of a sixth recovery, after five defective recoveries, was to this effect.

In *Wood's Conveyancing*, chapter Recoveries, under the head of avoiding recoveries, it is said, that the recoveror himself cannot falsify a recovery, and this proposition is given by way of contrast to the instances which are previously stated, of recoveries voidable for different reasons, and one of them is, that the recovery may be avoided, for that he, against whom the writ of entry is brought, is not tenant of the freehold, by right or wrong, at the time of the writ brought; and the language of *Pigott on Recoveries* (p. 169) is, that an erroneous

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(g) *Essay on Estates*, chap. Freehold.

common recovery is good till reversed, by reason, as he observes, of the intended recompense. This, however, is not the true reason. In point of law, the recovery amounts to a conveyance, as between the parties, when one of them has a seisin; and as an extinguishment by estoppel, when there is merely a right of action or of entry.

And in the *Marquis of Winchester's case*, it was said that common recoveries, by a benign interpretation of the law, ought to be maintained, because they are the common assurances of the land; but it was agreed that for the moiety whereof Anne Mills was tenant for life, the recovery was not any bar either to the estate-tail which Lionel had, expectant on the estate of Anne Mills, or to the remainder of Henry, because, that for this moiety Lionel was not tenant of the præcipe: but the recovery had its operation against him by estoppel and conclusion, which shall not bind the issue in tail, who claimeth *per formam doni*.

So in *Owen v. Morgan*, 3 Co. 5, the case was supposed to be the same as if the husband had had a remainder in tail, expectant on an estate for life; in which case, the book continues, a common recovery had against him shall not bind, because he was not tenant of the præcipe, nor seised by force of the tail; but the recovery, as to the estate

of the husband, took its effect by estoppel and conclusion, and therewith agreeth 12 Ed. IV. 14, that against a common recovery against the ancestor, the issue may say, that the ancestor was not tenant "*tempore brevis*." Both these cases suppose the recovery to be good between the parties, and consequently, they must operate as a conveyance, and the issue in tail and those in remainder are driven to their writ of error, to avoid the recovery ; and it would be highly inconvenient that the tenant in tail should *continue seised*, contrary to his own solemn act, or that the person to whom he conveys, and who is named tenant in the proceedings towards the recovery, should be at liberty to defend himself, and consequently, retain the estate, by alleging the incapacity of the tenant in tail to suffer a recovery, which will be binding against his issue and those in remainder ; and it cannot be supposed that if the demandant acquires a seisin either in fact, or in law, that he can claim to be exempt from the uses declared of his estate.

Mr. *Cruise* also admits that a common recovery may be good by estoppel.—See *Essay on Recoveries*, page 271.

Mr. *Pigott* also (p. 123) allows that if there be no tenant to the præcipe, yet, if the party who suffers the recovery has a fee-simple, he and his heirs are estopped. The like



proposition will be found in 2 *Cruise*, p. 90; and when he says, this is only where the person who suffers the common recovery is tenant in fee, he must be understood (and the context evidently shews it) as applying his observation to the effect of the recovery, as against persons claiming under the tenant in tail; and not to its effect or operation, as against the tenant in tail himself; nor even to deny that the recovery is not good, even against the issue in tail, &c. till avoided.

The point is more clearly stated in the same book, p. 271, in these terms: A common recovery when suffered of an *estate-tail*, will not operate as an estoppel against the issue in tail, the remainder-man, or reversioner. But even if Mr. *Cruise* wishes, in the former passages, to be understood in any other sense than the one I have ascribed to him, the authorities to which he refers do not support his conclusion.

In *Burnet and others v. Vade and others*, 9 Mod. 314, the Chancellor treats a recovery by tenant in fee-simple, as good to bind him and his heirs by estoppel, although there is not any tenant to the præcipe: and adds, the reason why there is no want of a tenant to the præcipe, in a recovery by tenant in fee, is this; that if such præcipe is brought against a stranger who is not tenant, and he vouch the tenant of the lands, and he enters

into warranty, by that he admits the stranger to be tenant of the lands, and so binds himself and his heirs by estoppel. He proceeds to observe, but if he had been tenant in tail, this would not have *estopped his issue*, because he claims by a superior gift, *per formam doni*, and not through or by his ancestor. And, in the case before the court, he said these recoveries have revoked the will, and Sir John Leigh has by them regained a new estate to the purpose of revoking the will, although it be the old one. In short, the recovery had the effect of passing the inheritance to the demandant, and for want of an express declaration of uses, (for so the case appeared upon the facts) the use resulted. This then is an admission that in the case of a tenant in fee suffering a common recovery, without a good tenant to the præcipe, the seisin passes to the demandant, so that the uses may arise on his seisin, and be expressly declared, or result by operation of law.

Also, in *Duke and Smith's* case, 4 Leon. 238, it was agreed, that if he in reversion suffered the common recovery to uses, his heirs cannot plead that his father had not any thing at the time of the recovery, for he is estopped to say that his father was not tenant to the præcipe, and therefore it is a good recovery against him by way of estoppel.

So in *Bull* and *Wyatt*, upon a special verdict it was adjudged; (see 1 Roll's Abr. 865, b. 12,) that if A. seised in fee of land, is disseised of this by B. and during the disseisin a præcipe is brought of this by D. against A. who suffers a common recovery of this, to the use of D. the recoveror, although this is in truth a void recovery for want of a tenant to the præcipe, yet it shall be a good recovery by estoppel, to bind A. his heirs and assigns; but in this instance it is apprehended the recovery operated by way of *extinguishment*, and not by way of *conveyance*.

*Webb v. Nect. Hill*, Cro. Eliz. 21, also decided, that a recovery is good against the tenant in fee, by estoppel, though the freehold is in another person: and the language of the court in *Lord Sey and Sele's* case, 10 Mod. 45, is, that common recoveries, although there are no tenants to the præcipes, are good by way of estoppel, against the parties who suffered them, though not against remainder-men and strangers, &c.

The greater part of the authorities are, it must be admitted, applied to the case of a tenant in fee, who suffers a common recovery, yet it is understood that tenant in tail is precisely in the same predicament for this purpose as tenant in fee, with the difference only, that in the case of a tenant in fee, the recovery cannot be

avoided, while, in the case of tenant in tail, it may be avoided by the issue in tail, or those in reversion or remainder: but it remains in force till avoided: and when the principles on which recoveries are founded are traced through *all their* circumstances; when we follow Mr. ———'s very just conclusion, that the recovery of 1772 would certainly estop *Luxford* and his heirs from alleging any thing contrary to it; when we also consider that the parties to the judgment, of a court of competent jurisdiction are bound by that judgment; and if the seisin does not pass to the demandant, it must remain in the tenant; and that the tenant or his heirs cannot after judgment aver that he was not tenant, though he might in the first instance have pleaded non tenure; and that there is no apparent error in the recovery, and that the parties to the judgment can avoid it only for error apparent on the record, and not for an extraneous fact, as non tenure, &c. of the tenant; we may, it is submitted, satisfy ourselves that the seisin which was vested in *Luxford* was drawn out of him by the operation of the recovery and passed to the demandant, and supplied a seisin to the user, and, consequently, conferred a title to the freehold, under which the recovery in question may be supported. No answer was given to this reasoning, by a gentleman, whose know-

ledge and acuteness would have enabled him with great ease to detect any fallacy in the observations. The probability is that he did not find any authority, or any principle to oppose to the reasoning, on which the observations are grounded.

To sum up these observations: it should seem that tenant in tail is *personally* bound by all such acts, as will bind a tenant in fee. The necessary deduction is, that the recovery will be so far good, that it will pass the estate, as between the parties, though it will not bind the issue, or those in reversion or remainder, because they are not bound by estoppels.

Admitting the recovery to be good between the parties, though not binding on the issue, &c. it will have the effect of a conveyance. The demandant will obtain a seisin: and uses may be declared of that seisin, and arise from the same, and be executed into estate.

The uses then will govern the title to the legal estate. Such recovery, though voidable, is not actually void: and, in the mean time till avoided, the legal title must be traced through this recovery; and, granting this reasoning to be correct, the freehold is in the *cestui que use* under the recovery, and not in the person to whom a conveyance was made of an estate of freehold, though not of the im-

mediate freehold, for the purpose of suffering the recovery. The conclusion is, that there is not any absolute occasion, when suffering another recovery, to call for a conveyance from the person named as tenant, in the former recovery. These observations will deserve to be weighed, when a title shall require the aid of argument in support of its validity.

*Thirdly.* Sometimes the conveyance for making the tenant to the writ of entry is defective in point of form or of substance, as in the instance of a bargain and sale for want of enrolment, or of a feoffment for want of livery of seisin; so a release for want of an estate capable of enlargement; so that no estate, not even a voidable one, passes; nor is it operative in any other mode, and consequently there is no good tenant to the writ. In this case, the concurrence of the tenant, in suffering the second recovery, cannot be necessary, since he never had any freehold; but the recovery, it should seem, is good, as between the parties; and the observations in the last instance are equally applicable to this instance.

*Fourthly.* But when the conveyance is good, and the recovery bad, so as to be absolutely void, and not merely voidable, as when it does not comprise the parcels, the converse is true.

*Fifthly.* Sometimes the recovery is suffered in the first instance, and afterwards, that is to say, after the end of the term, and by deeds dated subsequent to the term, the freehold is conveyed to the tenant.

This recovery is objectionable. It seems clearly voidable by the issue, and those in remainder and reversion, for want of a good tenant; and it would be highly imprudent to suffer another recovery, without calling for a conveyance from the tenant, or naming him tenant in the new recovery. In short, it would be extremely difficult, to support the second recovery, without such concurrence. But it might be contended, should it be necessary, that the declaration of uses, in the language in which this declaration is generally penned, is sufficient to govern the uses, not only of the recovery so suffered, but also of the conveyance itself; for this purpose, the argument to be urged is, that the recovery is good, as between the parties: that, as between them, the conveyance and the recovery form part of the same assurance; and that on this ground, and also on the language and general form of the declaration of uses, when well penned, the uses will be directed by the declaration in this deed, though subsequent to the recovery.

To obviate, as far as may be, the difficulties in practice arising from the circumstances

which have been noticed, two cautions are proper to be observed.

*First.* Never (except in the case afterwards noticed) to convey to the tenant, for any longer period, than during the joint lives of himself and the tenants in tail, who are to be vouched. Thus the estate conveyed to the tenant will determine with his death, so that there will be no necessity for resorting to his heir at law, or devisee; or, which shall first happen, it will determine on the death of either of the tenants in tail; so that unless the recovery shall be duly suffered in the first instance, and during their lives, the title will not have been fettered and, if further uses are to be declared, as in marriage settlements, &c. these uses may be superadded upon the conveyance, taking care only to make the conveyance, which is to supply a seisin to the uses in fee, and to limit the estate which is to be the ground-work of the recovery, for the joint lives of the tenant, &c. by the declaration of use on the conveyance.

The recovery may then be declared to enure to the uses which are limited after and expectant on the estate for the joint lives, in confirmation of, and for the purposes of giving effect to the same uses, discharged of the estate for the joint lives; or a still neater and more simple way of accomplishing this object



is to limit the use on the conveyance to the tenant during the *joint lives*; and from and after the determination of that estate, to the uses afterwards declared of the recovery thereby agreed to be suffered: and then to add the uses after the agreement to suffer the recovery.

*Secondly.* To take care never to introduce *more parcels* into the recovery deed than are intended to be comprised in the recovery; and whenever general words are used, for the purpose of describing the parcels, they should be confined to lands in those townships or parishes alone which are to be named in the recovery. Nor will it be irrelevant to observe, that such conveyance in fee, and declaration of ulterior uses, are necessary only when some persons, *not intended to be parties to the recovery*, as *vouchees*, are to pass the legal or equitable seisin of the freehold or inheritance. Suppose tenant in tail to be desirous of suffering a common recovery to the uses of a settlement made by him or by any other person; or to uses to prevent dower; and he alone has the freehold and first estate of inheritance, and the tenant to the writ of entry is made by a deed which passes a particular estate, as for the joint lives, &c. uses may be well declared of the inheritance, upon this recovery: for the fee-simple passes,

are blended, the grantee will hold under the title of the owner of the particular estate, during the continuance of that estate; and after the determination thereof, he will hold under the title of the person in remainder or reversion, so that there is no merger. This subject will be fully discussed in the long promised Essay on the Doctrine of Law respecting the Merger of Estates.

But to avoid all doubts on this point, the conveyance may be confined to the joint lives of the party and tenant, or tenant and vouchee; so as to leave a reversion, in other words, an intermediate estate, in the owner of the particular estate.

This mode of limitation will not only effectually guard against the merger of the estate of freehold, but will in the most effectual manner guard against the destruction of all powers, &c. since they will remain annexed to the reversion; and even if it should be doubtful whether the freehold was in the supposed tenant for life, or some other person, both might safely join in the conveyance, with the precaution of confining the limitation to the joint lives of the tenant and vouchee, or to any other like period, which would indisputably create a particular estate, derived out of the estates of the conveying parties.

The lives of the tenant and vouchee are most proper to be inserted in this instance, as a protection against the accident of the death of the supposed tenant for life, and the consequent determination of the estate of the tenant to the writ of entry, if circumscribed by the life of this supposed tenant for life.

In a recovery deed adapted to these circumstances, there should be a declaration, that the recovery shall enure to the use of the former owner of the life estates for his life, in confirmation of, and for the purpose of establishing his estate for life, and all powers, &c, annexed to that estate. The form of such a recovery deed will also be found in the appendix.

Formerly the practice introduced, it is believed, by Mr. Booth, was for the tenant for life to convey to the intended writ of entry for the life of the tenant for life, subject to a proviso, that unless 100,000*l.* should be paid on a given day (namely a day after the time within which the recovery was to be suffered), the use should cease. This is called the *one hundred thousand pound clause*. It is founded on two principles: 1st, that it is sufficient that there shall be a tenant at the time when a recovery is suffered, without any regard to a subsequent defeazance or avoidance of his estate.

and 2dly, that unless 100,000*l* shall be paid, and which it is intended; and from the magnitude of the sum compared with the value of the estate, it is certain, never shall be paid on the given day, the estate will, ipso facto, cease on that day and revert in the grantor, according to his former title. A form of this clause is in the appendix.

*Cautions when it is doubtful, whether a Person who intends to suffer a Recovery has an Estate for Life or in Tail, or when there are, or are supposed to be, contingent Remainders to be preserved.*

Sometimes it is doubtful whether the person about to suffer a recovery is tenant for life, or tenant in tail. Supposing him to be merely tenant for life, and no tenant in tail to join with him, his recovery would be a forfeiture of his estate (h).

To protect against the consequence of this forfeiture, and secure the enjoyment for a period of years, if the party shall so long live, a term is generally created by demise, and vested in a trustee for the owner:—and a form of a demise for this purpose will be found in the appendix.

According to *Pelham's* case there will be a forfeiture, by suffering a recovery, even although the tenant for life has a remote estate of inheritance. But from the decision in *Smith v. Clifford* it may be collected, that when the tenant for life has a remote estate of inheritance, or the owner of a remote estate of inheritance joins in the recovery, no forfeiture will be incurred. This point

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(A) *Pelham's* case, 1 Co. 14, b.  
*Smith v. Clifford*, 1 Term Rep. 738.

may deserve further consideration : it does not seem to be fully decided.

Sometimes also it is doubtful whether the person who is to suffer the recovery is tenant in tail, or merely tenant for life, with contingent remainders in favor of his children ; and, on the one hand, he is desirous of barring the estate-tail if he has any ; and, on the other hand, it is his wish, if he is merely tenant for life, to preserve the contingent remainders to his children. Without some precaution to preserve the contingent remainders, they would be destroyed by the recovery, unless, as sometimes happens, there is an interposed estate of freehold in trustees for their preservation, or in some other person who continued his ownership.

To guard against the destruction of the contingent remainders, the land should be conveyed either to the use of the intended tenant during the joint lives of himself and the intended vouchee ; with remainder to the use of a trustee, for the life of the vouchee ; in trust for the vouchee and his assigns ; remainder to the vouchee in fee, with a suitable declaration of the uses of the recovery.

Or the lands should be conveyed by the supposed tenant in tail to A. for the life of the supposed tenant in tail, to the use of the supposed tenant in tail, during the joint lives of himself and the intended tenant to

the writ of entry, with remainder to the use of A. for the life of the supposed tenant in tail, in trust for him and his assigns: and afterwards, by a distinct deed, *the supposed tenant in tail*, who by this means still retains the freehold, under the limitation to his use during the joint lives, should convey to the tenant to the writ of entry, for the purpose of suffering the recovery.

Of these modes the latter is preferable, as it raises no question on the title, on the face of the recovery deed; but each of these forms is sufficient for the purpose, as in each instance the freehold will be effectually vested in the intended tenant to the writ of entry; and the estate limited to the trustee, in trust for the supposed tenant in tail, will protect the contingent remainders from destruction: and this mode also, when adopted, will supersede the necessity of a demise for years, as the estate in the trustees will be not only a protection from the consequence of a forfeiture, but vest in him the power of taking advantage of the forfeiture, for the benefit of his *cestui que trust*.

In cases of this sort no express declaration should be added, for supporting contingent remainders, unless the party means to preclude himself from afterwards destroying the contingent remainders.

The same or some such precaution is ne-

cessary when A. is tenant for life with a contingent remainder in tail to himself or his children, with remainder over in tail; and the tenant for life is willing to assist the owner of the remote remainder in tail, in suffering a common recovery, so as to enlarge his estate-tail into a fee-simple; and is at the same time anxious, as he ought to be, to retain an estate of freehold for the purpose of preserving the contingent remainders depending on and supported by his estate. A limitation, during the joint lives of the tenant for life, and the tenant in the recovery, or of the tenant in the recovery and the vouchee, so that the tenant for life retains his estate for life, by way of reversion, will be sufficient for these purposes.

A form of a recovery deed adapted to these purposes will be found in the appendix.

There are some particular cases, in which other cautions, besides those already noticed, will be necessary.

For example, suppose A. and B. to be seised for the life of C. in trust for her, with contingent remainders to the children of C. for life, with a limitation over, which leaves it in doubt whether C. has not an estate-tail in remainder: and the reversion in fee is in A. and the parties are anxious to preserve the contingent remainders from destruction, and also to give the children estates-tail, on cer-



tain contingencies : it is obvious that to accomplish all these objects, a recovery must be suffered, or a fine levied. Preference being given to a recovery, it follows that the trustees must join to pass the freehold. C. must be vouched to bar her estate-tail if any : and A. must convey his inheritance also to guard against the doubt whether C. has or has not an estate-tail. Although by a conveyance by A. B. and C. to D. in fee, the estate for life of A. and B. would not be merged ; yet there is reason to apprehend the union of the estate of freehold, with the inheritance, would be a destruction, at law, of the contingent remainders, and thus one of the objects would be defeated.

To obviate this objection, the plan to be adopted is, A. B. and C. should convey to D. (the intended tenant) for the life of C. to the use of D. during the joint lives of himself and C. with remainder to the uses afterwards declared : and it should be expressed that the limitation made to the use of D. during the joint lives, &c. is to the intent that a common recovery may be suffered, and the recovery should be declared to enure to the use of A. and B. during the life of C ; and the intention having required that the fee should be limited to A. and B. as trustees, the next limitation should be to the use of E. for the life of C. to protect and pre-

serve the contingent remainders limited by the will of, &c.. Remainder to the children of C. for such estate, &c. to which they are entitled under the will, &c. with remainder to the use of A. and B. in fee.

Thus the trustees will retain their particular estate, free from all question or merger under their own conveyance; and the interposed estate of D. will protect the original estate for life, from merger, by reason of the fee, if any passes from C.

But another object is still to be attained, namely, to make the inheritance of A. subject to these uses and still to guard against the question of merger of the particular estate. To effectuate this object, A. and C. may grant to F. in fee to the uses afterwards declared, that is to say, to the use of E. for the life of C. upon the trusts previously declared of his estate; and after the determination of that estate, to the uses which are declared of the recovery, in remainder after, and expectant on, the determination of the estate of F.. Thus by the conveyance to F. instead of D. and by passing over the limitation to the use of A. and B. for the life of C. there is not at any time an union of the inheritance with the particular estate of A. and B. so as to raise the question of merger, as a consequence of even a momentary consolidation of the estate of A. and B. during

the life of C. with the inheritance either of C. or of A: while if the grant had been made to D. he would have had the freehold and inheritance, *simul et semel*: and if the use on the grant had been declared to A. and B. they would have had their old estate for the life of C. and another estate for the same period, derived out of the inheritance of G. and A. or one of them; and it might have been objected that the original estate for life was merged in the accessional estate for life.

It remains to be observed, that these precautions are not necessary when the estate is merely equitable. The principles of tenure of which forfeiture for alienation by particular tenants is a consequence, do not apply to alienation by particular tenants of equitable estates. Nor are these precautions necessary in suffering recoveries of lands of *copyhold tenure* for the purpose of barring entails of the customary tenure. Nor do contingent remainders of the equitable ownership, admit of destruction by the alienation of the particular tenant.

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*On Voucher.*

The voucher is that part of the proceedings in a common recovery, by which a warranty is supposed, and a person is vouched, in consequence of that warranty; and the vouchee admits the warranty, and takes the defence on himself, and thus, as between the parties, becomes the defendant. When the tenant vouches a person, who makes default, this is a recovery with *single voucher*; when this vouchee vouches another, who makes default, this is a recovery with *double voucher*; and when one person is vouched, who vouches another, who vouches a third person, this is a recovery with *treble voucher*. The consequence of voucher is *recompense*; in other words, judgment to recover in value.

In recoveries suffered to bar estates-tail, or remainders expectant on them, voucher is essential. Without a voucher, the estate-tail or the remainders expectant thereon, cannot be barred. As against the *issue in tail*, the voucher, and consequently recovery in value, in other words the recompense, or possible recompense, is the cause of the bar (*k*). But as to the *remainder-men*, the recompense is

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(*k*) Pigott on Recov. 31, Co. Litt. 373, a.

not considered as the cause of the bar. Against them the common recovery is considered rather as a common assurance (l). It follows that the issue cannot be barred, unless the recompense, on the voucher, will belong to them, in the same order of succession as their estate-tail, and as a substitution for that estate (m). Hence the difference made in some cases, between a recovery with double and a recovery with single voucher: and hence the doubt whether a treble voucher is not necessary under some circumstances. It is agreed that a recovery suffered by tenant in tail, by his own default, or by confession, will not bar the estate-tail, so that it is not only necessary that there shall be a voucher, but it is also material to the recovery, and essential to its operation as against the issue and persons in remainder, that the tenant in tail shall vouch some person to warranty, and have judgment to recover in value, so that there may be a recompense, to descend in the same line as the estate-tail would have descended (n).

But to convey an estate, or to operate by *estoppel*, a voucher is not essential: or if there is a voucher, it is not necessary that

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(l) Per Willes, 1 Wils. Rep. 73.

(m) Taltarum's case, 12 Ed. IV, 14, 19.

(n) Co. Litt. 373, a.

there shall be a voucher over, so as to give title to a recompense in value.

It follows, that it will be always necessary to distinguish whether the recovery is to operate simply as a conveyance, a release of right, or an estoppel; or is to be considered as the assurance of tenant in tail, so as to bar his issue and those who have a reversion or remainder expectant on his estate.

A common recovery may at the same time have two objects: one to bar an estate-tail, &c. the other to pass an estate; as the jointure of a married woman; or bar a right as a title of dower; or extinguish a collateral estate as a rent charge: and though it may be void as against the issue, for want of regular voucher, it may be good as a conveyance, or release, &c. and it may also and at the same time be good, as against the estate-tail, &c. and also as a conveyance, release, &c. though the recompense is carried over wholly to the estate-tail; and of consequence no benefit from the voucher is derived by any other person who has an estate, the right or title, or the collateral interest (o).

And it may in this place be called to mind, that the law uniformly carries the recompense, derived from a recovery in value, to

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(o) *Eare v. Snow*, Plowd. 514.  
*Pigott on Recov.* 25.

the persons by whom the loss is sustained. Thus if two persons are vouched jointly, and one of them has nothing, the recompense will belong to the person by whom the loss is sustained (*p*).

And when the lands recovered were intailed, the lands recovered as the recompense in value, will be considered as intailed in the same manner as the lands of which the recovery is suffered.

In common recoveries this recompense is merely nominal, and the judgment to recover in value is mere form: a form, however, to be observed, that a common recovery may have the semblance of a recovery in an adverse action.

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(*p*) Page 2: Hayward, 2 Salk. 470.  
Pigott on Recov. 176.

## OF THE VOUCHERS.

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COMMON RECOVERIES ARE WITH

- I. *Single Voucher.*
  - II. *Double Voucher.*
  - III. *Treble Voucher.*
- 

### I. *Of Recoveries with Single Voucher.*

A recovery with single voucher is now very rarely used. The only instance, in which it has been used for many years, is that which is to be found in Mr. *Fearne's* posthumous works (*q*).

In this recovery the writ is brought against the tenant in tail himself, as a tenant of the freehold; and it will be effectual to bar the estate-tail, only in the particular instance in which the tenant is actually seised of an estate-tail, conferring the right to the *immediate freehold*, in other words, an *estate-tail in possession* (*r*).

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(*q*) P. 336.

(*r*) *Taltarum's case*, 12 Ed. IV. 14, 19.



It will not bar any estate-tail which is divested or discontinued (s); nor will it bar any estate-tail which has been previously aliened, although the party takes back an estate-tail upon his conveyance (s); nor will it bar any estate-tail, in remainder or reversion, after and expectant on an estate of freehold, though the freehold, as a distinct estate, is in the tenant in tail himself (t), or though it is in a different person, and both are named tenants (v).

For these reasons a decided preference is due, and, in practice, is given, to recoveries with double or treble voucher.

Suppose A. tenant in tail in possession, and he discontinues, or even conveys, and takes back another estate-tail, and suffers a recovery in which he is named tenant, and vouches over, this recovery will bar the estate-tail taken under the discontinuance or conveyance; but it will not be a bar to the right under the original estate-tail. This was the very point decided in *Taltarum's* case, already cited: so that the same issue may be barred

(s) *Taltarum's* case, already cited.

(t) *Meredyth v. Leslie*, 6 Bro. Par. Cas. 909.

*Owen v. Morgan*, 3 Co. 5.

*Clithero v. Franklin*, 2 Salk. 568.

(v) *Lincoln College case*, 3 Co. 58.

*Peck v. Channell*, Cro. Eliz. 827.

*Pigott on Recov.* 35.

as to one estate-tail, and their right under another estate-tail may continue. To effect a bar under the original estate-tail, there must be a voucher of the tenant in tail, or his issue, and a voucher over.

On the subject of recoveries with single voucher the case of husband and wife must be called to recollection.

*The following Points occur.*

Husband makes a feoffment to the use of himself for life, remainder to his wife for life, remainder to the heirs of their bodies; and a præcipe is brought against him and his wife, and they vouch the common vouches; this bars not the intail: for the woman is not a proper tenant to the præcipe (w).

So if lands are given to husband and wife and the heirs of the body of the husband, remainder over, and the husband alone suffers a recovery, wherein he is tenant to the præcipe, and vouches the common vouches, this is no bar to the issue or him in remainder, for the recompense cannot enure to the estate, the wife having a joint estate, and no moiety between them, so the husband is alone no good tenant to the præcipe; the estate-

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(w) 3 Co. 6.

tail and remainder depended on the estate of husband and wife as on an entire estate (*x*).

It is otherwise of a *joint* estate conveyed to them before the coverture, for there one moiety is barred (*y*).

All these cases suppose that the recompense cannot go in the same line as the estate-tail, since the husband is named tenant, and the recovery in value cannot go immediately to the estate-tail. The cases admit that if any other person had been tenant, and the husband vouched, and he had vouched over, the estate-tail would have been barred (*z*). These cases turn on a point of great nicety. The reasoning is incorrect, so far as it ascribes the recovery to be defective for want of a good tenant to the writ of entry.

## II. Of Recoveries with double Voucher.

In recoveries with double voucher, the tenant in tail, instead of being named tenant to the writ of entry, is vouched. Hence the necessity in most cases of a previous con-

(*x*) 3 Co. 5.

Pigott on Recov. 38.

(*y*) Marquis of Winchester's case, 3 Co. 1.

(*z*) Cuppledike's case, 3 Co. 5.

Fitzwilliams's case, 6 Co. 32.

Hellett v. Saunders, 3 Lev. 107.

veyance, for the purpose of making a tenant to the writ of entry.

The rule of law is, that the person who comes in as a vouchee, on a common recovery, comes in of all estates-tail of which he is or of which he ever was seised: or which, with the exceptions of contingent or future interests he has in point of right or title (a).

Thus a recovery in which the tenant in tail is vouched, and is vouched over, will not only bar an actual estate-tail, of which he is seised, but it will bar all estates-tail which have been divested, discontinued, or previously aliened. And it may bar several estates-tail, or the right to several estates-tail, by one and the same operation (b).

It will also bar all remainders and reversions expectant thereon, even though the estate-tail has been previously barred by a fine with proclamations levied by the tenant in tail (c). And the better opinion is, that a recovery suffered by the issue in tail after the death of the ancestor, and after a fine with proclamations levied by the ancestor, which has effectually barred the estates-tail, will

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(a) Salk. 571.

Brook, Tail, Plea. 32.

(b) Baxton v. Lever, Cro. Eliz. 388. 1 Vez. 253.

(c) Sheffield v. Ratcliffe, 2 Roll. Rep. 418.

bar all remainders and reversions, which are, or were expectant on the estate-tail (d).

### III. *Of Recoveries with treble Voucher.*

Recoveries are sometimes, though not frequently, suffered with treble voucher.

The only possible case in which a recovery with these vouchers can be necessary is, in the instance in which tenant in tail creates an estate-tail, derived out of his own estate-tail; and the two intails are, in point of estate, or of right, existing, at one time, in *distinct persons*, and both are to be barred.

In this case, the owner of the derivative estate-tail should be first vouched, and he should vouch the owner of the original estate-tail, who should vouch the common vouchee: not, however, that the order of the vouchers is essential, except as a matter of form; for, upon principles, it is clear that if each tenant in tail is distinctly vouched, and vouches over, his estate-tail will be barred, although he should be vouched out of the order which is recommended.

By the statute law there cannot be more than three vouchers in the same action.

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(d) Fearn's Posthumous Works, 442.

A difference of opinion exists among conveyancers, whether a recovery with treble voucher is necessary in any case. Few admit the necessity of vouching the two tenants in tail distinctly. The majority, relying on *Page and Hayward*, are of opinion, that it is sufficient that both tenants in tail shall be vouched jointly.

The objection to this mode of vouching is, that the recompense cannot go to the issue of both tenants in tail; so that the analogy to real adverse actions, in which the recompense is the foundation of the bar, does not exist. On this point see *Watk.* prin. p. 135. *Co. Litt.* 101 (h), and 376, (a & b). *Plowden's* argument in the case of *Bassett v. Morgan*, published at the end of his reports.

In all other cases, it is true that the voucher of a tenant in tail, jointly with another person, will be effectual to bar the estate-tail (f).

That decision proceeds on the ground, that the recompense will go accordingly to the title of the persons by whom the recovery is suffered.

This, however, is not a decisive answer to the objection, which requires a treble voucher: because in the case of an estate-tail derived

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(e) 2 Salk. 570.

(f) *Eare v. Snow*, *Plow.* 514. *Co. Lit.* 376, b.

out of an estate-tail, it is impossible that the same recompense can, consistently with the principles of law, be a recompense to both classes of issue; since it is absurd to suppose that the issue under the derivative estate-tail, are, in the first place, to recover the recompense, as upon a defeasible title, and that the issue under the original estate-tail may recover the recompense from them (*g*).

Indeed this mode of compensating them is a solecism, and impracticable in any legal mode known to the rules of law; because the issue under the original estate-tail, if they can recover the recompense in any mode, must recover it for their own benefit against the person whom they or their ancestors vouch.

Nor is it possible that the recompense can be divided between the different classes of issue, so as to be a compensation to all of them; since the issue under the original estate-tail will not have a recompense to the extent of their title, unless they have other lands, to the full value of those originally intailed.

To put the case in the most striking point of view, the recovery may be supposed to be suffered by the tenants in tail themselves :

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(*g*) See *Mary Portington's case*, 10 Co. 37.

so that the issue cannot derive their title to the recompense, otherwise than through their ancestors, or than the foundation of the judgment given upon the different vouchers; thus disentangling the case from the supposition that the issue under the original estate-tail are the only persons to be considered in determining the title to the recompense. For as between the two tenants in tail themselves, it is clear that the owner of the derivative estate-tail has an exclusive right to the recompense.

The answer which an eminent and liberal gentleman since dead, gave against the necessity of vouching the tenants in tail separately, was, that “ had the vouchers demanded a lien, that is, required the tenant “ to shew what he had to bind them to the “ warranty, and what estate they were bound “ to warrant, the recompense could only “ have been according to the estate to which “ the actual warranty was annexed; but in “ consequence of their entering into the warranty paramount, the writ of *execution* of “ the land, recovered against the common “ vouchee, must be general for delivery “ thereof, to the first vouchers, without expressing for what estate; and it appears “ by the books, that though the vouchers “ themselves are, by entering into the voucher “ jointly, estopped from saying that they had



“ not a *joint* estate, their issue will not be  
 “ estopped. The claims of both classes of  
 “ issue are upon one estate, and an estate of  
 “ equal value is awarded as a recompense  
 “ for it, and will be subject to the same  
 “ claims. After the death of their vouches  
 “ they must implead *one another*, and the  
 “ recompense will go to those who shall be  
 “ adjudged to have sustained the loss; for if  
 “ the issue are not estopped, no injury is  
 “ done. The law remains open.” The au-  
 thorities relied on were Co. Litt. 101(b),  
 and 376, (a & b).—the case of *Page v. Hay-*  
*ward*, and *Plowden's* argument in the case  
 of *Bassett and Morgan v. Mansell*, publish-  
 ed at the end of his Reports.

Of the authorities cited, that which bears  
 most on the argument is the passage in Co.  
 Litt. 376, b. The example in that case is  
 taken from *Eare and Snow's* case, in *Plowd.*  
*Comm.* 514. The language of Lord *Coke* is,  
 “ If tenant in general tail be, and a common  
 “ recovery is had against him and his wife,  
 “ where the wife hath nothing, and they  
 “ vouch, and they have judgment to reco-  
 “ ver in value; tenant in tail dieth, and the  
 “ wife surviveth: so that the issue in tail had  
 “ the whole loss, the recompense shall enure  
 “ wholly to him: and the wife, albeit she  
 “ was party to the judgment, shall have no-

“ thing in the recompense, for she loseth  
“ nothing.”

But this observation does not relieve the case under consideration from its difficulties. In Lord *Cake's* case there was only one estate-tail, and there was one recompense sufficient to compensate it. In the case under consideration, there were two estates-tail and only one compensation, so that the issue claiming under one of the estates-tail must be disappointed, since each of them cannot have the recompense in value; for if it should be given to the issue claiming under the derivative estate-tail, the issue under the original estate-tail will be bound, without having any equivalent. On the other hand, in case the recompense in value shall be given to the issue under the original estate-tail, the issue under the derivative estate-tail will be bound without having any recompense. As between the two classes of issue, no doubt the issue under the original estate-tail ought to be preferred, and they certainly would be preferred whenever their title came in competition.

But many cases may be put in which the utmost confusion would arise from giving the recompense to the tenant of the original estate-tail or his issue, in exclusion of the tenant of the derivative estate-tail and his issue; and in

case the recompense shall be given to the tenant under the derivative estate-tail or his issue, what ground is there for treating the original estate-tail with the remainders expectant thereon, to be bound by the operation of the recovery? Suppose A. tenant in tail to make a settlement in favour of B. in tail, and a common recovery to be suffered in which both shall be vouched jointly; to give the recompense to A. would be injurious to B. who as between A. and B. is the rightful owner. Or supposing A. after the settlement to have levied a fine and barred his issue, and the issue and B. to be jointly vouched, what pretence is there for giving the recompense to these issue: for as between the issue and B. the title is in B. and not in the issue? In the latter case it might be contended that the recompense should go to B. and still that the recovery by the issue in tail would bar the remainders over expectant on his estate-tail, since the remainders are barred without regard to the recompense in value. But though this may be an answer by way of estoppel to the instance in which the issue are vouched, it cannot be an answer to the issue themselves when the recovery is suffered with the voucher of their ancestor, and the recovery is produced as a bar to their claim. For the books seem agreed that recompense in value is the only ground for bar-

ring the issue, but the remainders may be barred without regard to the recompense, on the ground that the recovery is a common assurance.

It will be now proper to consider whether there are any grounds which render it prudent at least, if not necessary, that a recovery with treble voucher should be suffered where there are two estates-tail to be barred, and one of these estates-tail is derived out of the other of them.

The old books, and, among them, Co. Litt. certainly placed the bar of the issue of tenant in tail on the ground of recompense; and if recompense is really (as in principle it is professed to be) the ground on which recoveries bar the issue, it is obvious that two classes of issue, claiming in opposition to each other, cannot have the benefit of one and the same recompense: one class of issue must be disappointed, since they do not claim under one and the same title, in the line and course of remainder: so that the recompense may be enjoyed first by the issue of one tenant in tail, and afterwards, and by way of remainder, by the issue of the other tenant in tail.

The doctrine advanced in *Page v. Hayward* does not bear on this point. The greater part, if not all, the learning in that case is warranted by former determinations: and it cannot be denied, that when a tenant

In tail is vouched, and vouches over, he comes in in privity of all the estates he ever had; and though a stranger is joined with him, the recompense will belong to the tenant in tail, exclusively of the stranger; and when tenant in tail and the owner of a remainder in tail, are vouched jointly, there is no doubt of the efficacy of the recovery, since the voucher of the first tenant in tail alone would have barred the remainder in tail. The distinguishing circumstances of this case are:

*First*, That when one estate-tail is derived out of another, the issue under the original estate-tail will claim in exclusion of, *and not in subordination* to, the owner of the derivative estate-tail; and

*Secondly*, The issue under the original estate-tail are not strangers, nor are the issue of the derivative estate-tail to be considered in that light, till the gift which created their estate-tail is avoided. Instead of denying the necessity of distinct vouchers, Lord *Holt* rather approves of them, as more regular, though, under the particular circumstances of the case of *Page and Hayward*, he considered the voucher of the tenant in tail, jointly with another person, sufficient to bar the entail.

The most diligent search has not produced any authority, in which it has been asserted

or denied, that a recovery with treble voucher is necessary, in a case like that under consideration, or in any case whatever. But ever since *Page* and *Hayward*, recoveries with treble vouchers have been sometimes used; and Mr. *Pigott*, in p. 26, if properly understood, does in cases in which one estate-tail is or may be derived out of another estate-tail, recommend a treble voucher: for though he puts the case generally of a tenant for life, with remainder to his son in tail, he must have had in his contemplation an ancient family estate, in which the tenant for life might have a dormant intail: and when the observations of Lord *Holt* in *Page* and *Hayward*, as reported in *Pigott*, pages 191, 192, 193, 194, are taken with their context; and the sense of the words “*in this manner*” are attentively weighed, he seems to recommend the several and *distinct vouchers of different persons of the family*; and it would have been nugatory, on the part of Mr. *Pigott*, to have advised a treble voucher, if a voucher of the father and son jointly would have answered every purpose. See also *Cruise on Recoveries*, 219; and Mr. Justice *Blackstone*, in the 2d vol. of his *Commentaries*, p. 359, certainly supposed, that the exigency of the case might require a treble voucher; and it cannot be requisite in any case, unless it is requisite in a case attended with the circumstances

now under discussion. Therefore, though for the purpose of supporting recoveries as common assurances, the court may determine that both intails will be barred by a joint voucher, of several tenants in tail, even when one of the estates-tail is derived out of the other, in the same manner as a recovery on the voucher of a tenant in tail, who has several estates tail, or the right of different intails, in the same land under different titles, as (in *Sheffield and Ratcliff*, 2 Rolls. Rep. 418,) will bar all the intails; the law on the point cannot be safely acted upon, or considered as clear, till it has received the determination of a court of competent jurisdiction, deciding the question.

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*By what Tenants in Tail a Recovery may be suffered with Effect ; and to what Extent in Point of Share.*

And first, It is now to be considered by what tenants in tail a common recovery may be suffered, so as to bar the estate-tail, and the remainders and reversions expectant thereon. In this division, which in a great measure, is a summary, or review, of points already noticed, it is impossible to avoid the appearance of repetition.

A recovery is *peculiarly* the assurance by which a tenant in tail may *enlarge*, or more properly speaking, convert his estate-tail into a fee, by barring the estate-tail, and all remainders and reversions expectant on that estate : so as to acquire an ownership, co-extensive with that of the person by whom the estate-tail was created ; and *cæteris paribus*, namely, with the concurrence of the freeholder, a recovery may be suffered with effect, either by the tenant of an estate-tail in possession, or of an estate-tail in remainder or reversion (*h*), or by the person on whom an estate already alienated, divested, or discontinued,

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(h) 2 R. Ab. 394, *supra*;



was entailed, (i) and even by the *issue* in tail, although the estate-tail has been previously barred, by a fine with proclamations levied by their ancestor (k); or as a consequence by the statute of limitations, or warranty, &c.

But as it has been already observed, no one except a *tenant of an estate-tail in possession* can suffer a common recovery with *single* voucher with effect, and then only so as to bar this particular estate-tail, and the remainders, &c. expectant on that estate. But a person who has a remote estate-tail may, by merger, surrender, &c. or even *disseisin* (l) of tenant for life, become tenant in tail in possession. The *alienee* of a tenant in tail, or the *assignee* of the crown, claiming the estate of a tenant in tail under an attainder for treason (m); cannot, in any case, bar the estate-tail or the remainders by suffering a common recovery.

The privilege of suffering a *recovery* is given to the tenant in tail and his issue, and is *personal* to them:

And a corruption of the inheritable blood of the *issue*, by the attainder of their ancestor

(i) Maxwell's case at the end of Plow. page 8.

Sheffield v. Ratcliffe, Hob. 334.

Lincoln College case, 3 Co. 58. b.

(k) Barton v. Leaver, Cro. El. 388.

(l) 2 R. A. 395.

(m) Hob. 259.

for *treason* (n), will preclude their right to suffer a common recovery, so as to bar the remainders; for by the corruption of the inheritable blood, the issue are strangers. They forfeit the character of heirs in tail, so far as to take any benefit under the intail, though the estate continues by reason of the continuance of issue (o).

And *attainder* of tenant in tail creates a disability (p) to suffer a common recovery. He is *civiliter mortuus*. Between the crime and attainder, it should, from analogy, seem, that a common recovery may be suffered (q).

But a recovery suffered by an *alien*, who is tenant in tail, will bar the remainders expectant on his estate (r).

And, as already observed, when the intail is of a subject which has a limited duration, as a rent charge, created *de novo*, and limited for an estate-tail, without any remainders over, the recovery of tenant in tail cannot enlarge the estate beyond the period prescribed for its duration.

And, as already noticed, it is apprehended that when an estate-tail *in lands* is derived

(n) Jenk. Cent. 251.

(o) Hob. 345.

(p) See Barton's case, 2 R. A. 394. Jenk. Cent. 250. 1 Keb. 398, by mistake cites Barton v. Bremer's case; as contra.

(q) Stevens v. Winning, 2 Wils. 219.

(r) 4 Leo. 34.

out of a qualified or determinable fee, the recovery cannot do more than acquire the ownership for the whole of that determinable or qualified fee.

In short, the fee acquired by means of the recovery of the tenant in tail, cannot, in any case, be larger than the estate out of which the estate-tail is derived.

It is also observable, that when a tenant of a remote estate-tail suffers a common recovery, in which he is vouched, and vouches over, the effect of this recovery will be merely to bar his own estate-tail, and the remainders and reversions expectant thereon (*s*), and all conditions and collateral limitations annexed to his estate.

It will not affect *prior estates-tail*, (*t*) or any other prior estates. On the contrary, the owner of an intermediate estate-tail may, afterwards, by suffering a common recovery, bar the fee, acquired through the medium of the recovery, suffered by the owner of a more remote estate-tail.

To these observations also it may be added, that no tenant in tail can, by suffering a common recovery, bar any charges which are an incumbrance on his own estate, nor any es-

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(*s*) 3 Co. 6. 8 Term Rep. 10.

Smith v. Clifford, 1 T. Rep. 738.

(*t*) Smith v. Clifford, already cited.

tates derived out of his own estate-tail. On the contrary, he may give stability to these estates and charges, by suffering a common recovery (u).

The person also by whom the recovery is suffered must be full and complete tenant in tail, either in point of vested interest, or of right to an estate which was once vested.

In the first place, the owner of a *contingent* or *executory* interest in tail, cannot, it is apprehended, by a common recovery, bar either his own interest, (except by way of estoppel) or the remainders, &c. expectant thereon; much less can the *issue in tail* (w) suffer a common recovery with effect in the life-time of the ancestor.

At the same time, it is observable, that a recovery suffered by tenant in tail, will bar contingent remainders expectant on his estate, and also terms of years, &c.

The owner of a contingent interest should be very cautious how he suffers a recovery or levies a fine, which may extinguish, even as against himself, the contingent interest in tail. It will prevent the vesting of the estate and as against himself at least, when there is a recovery, and as against himself and his

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(u) *Goodright v. Mead*, 3 Burr. 1703.

*Stapilton v. Stapilton*, 1 Atk. 2.

(w) *Apprise v. Apprise*, *Bendloes*, cited 1 Keb. 391.

issue, when there is a fine with proclamations, preclude the right of suffering a recovery, when the estate, unless extinguished, would have become vested. This is understood to be a new point.

*Secondly.* A recovery will be good only for that portion of estate which is vested in the tenant in tail who is vouched.

Thus when several persons are tenants in common, or joint tenants in tail, and one of them is vouched, the recovery will be good only for his share : or if several are vouched, the recovery will be good only for their respective shares.

As often as husband and wife are tenants in tail by intireties, neither of them alone in the life-time of the other of them, can, by a common recovery, bar the estate-tail (x), so as to prejudice the other of them, or bar the issue in tail, or those in remainder or reversion. In these and many other particulars, there is a difference between the operation of a fine and recovery (y). But when husband and wife are tenants in tail by moieties, in other words have an estate to them and the heirs of their bodies before their marriage, either of them alone before the marriage, or the husband alone, during the coverture, may, by a common

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(x) 3 Co. 5.

(y) Beaumont's case, 9 Co. 139. Hob. 257.

recovery duly suffered, bar the estate-tail, in his or her aliquot part.

And it is to be observed in this place, the recovery to be good for a particular share must be with the concurrence of the person in whom the freehold of that *identical* share resides.

*Thirdly.* A tenant in tail after possibility of issue extinct, has no longer the power of barring the estate-tail, or the remainders expectant thereon.

For all the purposes of alienation, he is considered merely as tenant for life: since his estate must necessarily determine with his death: so that if he foregoes the right of suffering a common recovery, while completely tenant in tail, that right cannot be exercised, when he is reduced to the situation of tenant in tail after possibility of issue extinct.

At the common law, every tenant in tail had the power and the right of suffering a common recovery; and this right is so inseparably annexed to his estate, that it cannot be restrained by condition, limitation, custom, or the like.

But the statute law has introduced two exceptions of which some notice has already been taken.

The first is applicable to tenants in tail of *the gift of the crown* for services performed,

and in which the reversion or remainder remains in the crown; so that to bring a case within this exception, there must be,

*First, An estate-tail.*

*Secondly,* It must be of the gift of the crown, namely, the king for the time being, while king, or by the purchase, or provision of the crown.

*Thirdly,* It must be for services performed (z), and the consideration, &c. must appear on record (a).

*Fourthly,* The remainder or reversion in fee or in tail (b) must be in the crown, and the restraint on the alienation continues so long only as the remainder or reversion remains in the crown. And therefore, an alienation by the crown, of the reversion or remainder, leaves the tenant in tail at liberty to bar the estate-tail, and the reversion, and remainder (c); and while the estate-tail is protected from being barred, all other subsequent estates in other persons are also protected (d): for unless the estate-tail can be barred, no other estate admits of being barred; but note, an estate-tail of the gift of the crown, though

(z) *Perkins v. Sewell*, 1 Bl. Rep. 654.

(a) Co. Litt. 372, b.

(b) *Ibid.*

(c) *Ibid.*

(d) *Ibid.*

it cannot be barred, either by fine or common recovery, while the reversion or remainder remains in the crown, may be barred by non-claim on a fine, or by collateral warranty, so as the tenant in tail is not a party or privy,

It has already been observed that even at the common law a recovery by tenant in tail will not bar a reversion or remainder in fee in the crown. But the recovery will operate so far as to convert the estate-tail into a base or determinable fee, and bar the issue (*e*). It will even bar remainders in strangers (*f*); and also a remainder after an estate-tail in the king (*g*); so that no estate is protected by the common law, from the operation of a recovery by tenant in tail, except a remainder, or reversion in the crown (*h*).

The second exception applies to women tenants in tail *ex provisione viri*.

By the stat. of 32 Hen. VIII. c. 36, s. 2, they are restrained from suffering recoveries, &c. either while sole, or under coverture with any after-taken husband; with the exception

(*e*) *Neale v. Wilding*, 1 Wils. 275.

(*f*) 2 Rolls Abr. 394, l. 2. *Bendloes*, pl. 254.

*Neale v. Wilding*, 1 Wils. 275.

(*g*) 2 Roll's Abr. 394, l. 5.

*Sir Hugh Chomley's case*, Moor, 344. *Broke Assurance*, pl. 6.

(*h*) *Hob.* 339.



that the act shall not extend to any recovery to be had with the heirs next inheritable to the woman, or where the person next in remainder consents to the same : provided such consent appears on the record, or is enrolled ; so that to bring the case within the exception, the issue in tail or the person in remainder must be vouched, or their consent must appear by a deed enrolled. This act equally extends to *equitable* and legal estates (i).

But this act does not extend to restrain a woman-tenant in tail, *ex provisione viri*, from suffering a recovery jointly with her husband, (k), or with the issue in tail (l); unless the title of such issue is defeated by the birth of a more immediate heir in tail (m).

Nor does it extend to lands settled by the wife, or given by any of her friends (n), or proceeding from the voluntary gift of a stranger (o); nor to lands settled on the wife in *general tail*, with remainder to her in fee (p); nor when she is tenant in general tail, and the fee is limited to a stranger (q). In short, the

(i) Clifton v. Jackson, 2 Vern. 489.

(k) Kirkman v. Thompson, Cro. J. 474.

(l) Mackwilliam's case, Hob. 332. 3 Co. 59.

(m) 3 Co. 60.

(n) Laughter v. Humphrey, Cro. Eliz. 521.

(o) Ward v. Walthew, Cro. J. 173.

(p) 4 Co. 3, b.

(q) Foster v. Pittfall, Cro. Eli. 2, 424

Hughes v. Clubb, Com. Rep. 369.

restraint on alienation is merely for the benefit of the husband, his issue, or heirs.

Nor does this statute extend to copyhold lands (r).

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(r) Harrington v. Smith, 2 Siderf. 41, 73.  
Gillb. Ten. 181. 4 Mod. 45.

*Of the Necessity of a Seisin in the Demandant  
before any Uses can arise under the Recovery.*

To perfect the legal title under a common recovery, and to give a seisin to the demandant in the recovery, a writ of seisin (except in some particular cases (s), as where there is a reversion expectant on a term of years, and there is an entry or claim) must be sued, and seisin delivered; and until such seisin is delivered, no uses can arise under the recovery; consequently till there is a seisin in the demandant, as the means of supplying a seisin to the uses, the person claiming under the uses hath no legal estate which will admit of an alienation by them, by deed: but they have an inchoate interest, which will allow of their devising their interest by will (t).

The true ground of *Selwyn v. Selwyn* is that, even before the recovery was suffered, the testator had in him a title to a future use, which gave him a power of testamentary alienation; and his will operated on this use in its fiduciary state, and also on the estate itself, when the use was executed into estate.

(s) *Witham v. Lewis*, 1 Wils. 48.

4 Bro. P. C. 504.

(t) *Selwyn v. Selwyn*, 2 Burr. 1181.

Another ground of that case, and the ground to which it is more generally ascribed, is that the recovery and recovery deed formed part of the same assurance.

Regularly, in preparing *Abstracts of Title*, the time at which the writ of seisin is returnable should be stated, for the purpose of ascertaining the time at which the title to the legal estate is complete: and that it may appear that there existed a complete title to the legal estate, at the time when a conveyance was made, by the persons claiming a title under these uses.

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*Of certain Points relating to the Execution.*

In this place it is to be observed that if judgment is given in the life-time of the parties to the recovery, execution may be sued by or against the heir (*u*).

By the common law, the writ of execution and the return must have appeared on the record: but now, by the statute 14 Geo. II. c. 20, s. 4, the law seems to have been remedied in this respect, and the recovery deed made evidence of the recovery, so as to supply any defect in entering the writ of seisin, &c. on record.

Hence the necessity, that the recovery deed should be full and explicit, in prescribing the mode in which the recovery is to be suffered, and that care should be taken, that, in prescribing the mode of suffering the recovery, no error shall be committed. The form in the appendix may be safely followed. It will be found to be correct, not only in prescribing the mode of suffering the recovery, but in allowing a departure from some of the prescribed ceremonies, without deviating from the intention of the parties; so that should there be any thing to rebut the presumption

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(*u*) *Shelley's case*, 1 Co. 93.

arising from any departure from the prescribed form, the alternate provisions may account for that departure, without raising any objection against the validity of the recovery.

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*Observations, peculiarly applicable to Lands  
of Copyhold Tenure.*

Copyholds may, under a custom for that purpose, be intailed (*x*). Unless there is a custom to intail, words of gift to a man and the heirs of his body, pass a *conditional* fee (*y*). This doctrine is very strenuously combated by Mr. Watkins (*z*). When the legal estate does not admit of a direct intail, the rule is *Æquitas sequitur legem*; and as the property does not admit of an intail at law, it equally excludes an intail in equity; and the intention of the parties, however strongly expressed, cannot vary the law (*a*). Lord *Hardwicke* expressly says, the trust estate of a copyhold can in no case be capable of an intail, where the legal estate is not, it being necessary that there should be the same rules concerning property in law and equity. Instead then of attempting to intail, through the medium of a trust, there should be such a trust, as is used to keep leasehold estates and chattel interests in the same channel as real estates

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(*x*) *Heydon's case*, 3 Co. 8.

3 Lev. 327. *contra*, per *Hale*.

(*y*) *Pullen and Middleton*, 9 Mod. 434.

(*z*) *Watk. Copyhold*, 153.

(*a*) *Pullen v. Middleton*, already cited.

intailed. When copyholds are intailed at law, the customary mode of barring the intail must be observed. This may be by surrender (*b*), customary recovery (*c*), forfeiture and regrant (*d*); and one of these modes may be concurrent with the other of them (*e*). Thus a custom to bar by surrender, may be concurrent with a custom to bar by recovery, and a surrender to the use of a will may have the effect of barring the intail, as well as to accomplish the particular object in view. The right to bar an intail, is a necessary attendant or a right to intail, and a custom to restrain the right to bar an intail is void (*f*). This is to avoid perpetuities; and unless there is a custom pointing out a different mode, the intail may be barred by surrender (*g*). A customary recovery, suffered in the lords' court, is the more general, and it is the safe mode, since it embraces the effect of a surrender (*h*). And when a recovery is necessary, by the custom of the manor, it must

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(*b*) *Everall v. Smalley*, 2 Str. 1197. 1 Wils. 26.

(*c*) *Dell v. Higden*, 4 Co. 23, a.

*Dunn v. Green*, 3 P. W. 10.

(*d*) *Grantham v. Copley*, et al. 2 Saund. 422.

*Pilkington v. Stanhope*, Siderf. 315.

(*e*) *Everall v. Smalley*, already cited.

(*f*) *Taylor v. Shaw*, Carter, 22.

(*g*) *Moore v. Moore*, 2 Ves. 596.

*Carr v. Singer*, Ibid. 604.

(*h*) *Everall v. Smalley*, already cited.



have the like forms as are observed in a recovery of lands of freehold tenure; namely, there must be a demandant, tenant, and vouchee; and the vouchers must be in like manner as if the lands were of freehold tenure. The recompense in value must be of lands within the same jurisdiction.

When the legal estate of copyhold lands may be entailed, the equitable ownership also admits of being intailed (*i*).

According to the earlier authorities (*k*), an equitable intail of copyhold lands may be barred, without the formalities of a customary recovery.

And *Lord Hurdwicke* (*l*) has been understood to have laid it down as a general rule, that at least an equitable intail of copyhold lands may be barred by surrender.

In the following observations will be found the result of frequent consideration, on this point, and a full examination of the authorities.

It is quite clear that the trust or beneficial ownership of copyhold lands, intailable at law, may be intailed in equity: and it is now settled, that the equitable intail of copyhold lands must (with the exception, perhaps, for

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(*i*) *Pullen v. Middleton*, already cited.

(*k*) 10 Vin. Abr. 266.

(*l*) *Radford v. Wilsop*, 3 Atk. 815.

the exception is not admitted) of the case in which the equitable tenant in tail becomes the owner of the legal estate in fee, and the exception of particular cases like *Otway* and *Hudson*, 2 Vern. 583, be barred by the same means, as the intail of the legal estate must be barred. When a common recovery is necessary to bar a legal intail, the practice has been to bar the equitable intail of copyhold lands by obtaining first a surrender to the cestui que trust in tail, and afterwards suffering a customary recovery. But such recovery may be suffered by the equitable tenant in tail, while he continues merely equitable tenant in tail, since a recovery by an equitable owner will have the same effect on the equitable ownership, as a common recovery by the tenant in tail, of the legal estate, would have on the legal ownership. And with Mr. *Watkins*, in his excellent *Treatise on Copyholds*, p. 181, it is agreed "that it should seem a recovery suffered in the manor court of an equity in copyholds, is analogous to that relative to freehold property, and indeed that the same mode should be adopted for the barring of an equitable, as it would be necessary to pursue for the purpose of destroying a legal intail." This doctrine is fully warranted by the opinion of Lord *Hardwicke* in the case of *Pullen v. Lord Middleton*, 9 Mod. in which his lordship

says, "If the estates had been intailed, it  
" would have been necessary to have barred  
" the intail by some proper means, either by  
" a recovery suffered in the lords' court, if  
" the custom of the manor admitted of it,  
" or by a surrender; and though the intail  
" had not been of the legal, but of the trust  
" estate, all possible endeavours ought to  
" have been used, to have barred it in the  
" ordinary way; and the rules of the com-  
" mon law, in regard to the barring of such  
" estates-tail, ought to have been pursued,  
" as near as possible." His lordship, in this  
part of the case, adverted to *Otway and Hud-  
son*, 2 Vern. 583, (a case depending entirely  
on the circumstance, that the tenant in tail  
had done every thing in his power for the  
purpose of barring his equitable estate-tail).  
The opinion also of Lord *Loughborough*, in  
*Rose v. Lowe*, 1 H. Black. 461, in answer to  
several cases which were cited, to shew that  
the equitable intail of copyhold lands may be  
barred by a mere devise, was to this effect:  
" Now though it is true that the devise of  
" an equity in a copyhold, requires no sur-  
" render, yet that is, where the testator has  
" a devisable estate; the intail *must first be*  
" *barred*; the party must have done some  
" antecedent act to enable him to devise;  
" here no such thing was done, and the  
" will of Thomas Weston Harper did not

“ operate long ; there was ~~no~~ length of pos-  
 “ session against the intail, on which to pre-  
 “ sume a surrender : but it is said that the  
 “ intail was barred by the deed of the  
 “ younger Thomas Weston Harper ; but it  
 “ would require a deal of argument to prove  
 “ that a lease made by the equitable tenant  
 “ in tail of a copyhold should be a bar of the  
 “ intail. It is not clear then, that the estate-  
 “ tail was *de facto* barred by any act of the  
 “ tenant, if not, then Mary Weston Harper  
 “ is intitled as heir in tail ”—To these autho-  
 rities may be added, the decisions in courts  
 of equity as to freehold lands. There a re-  
 covery is considered, as absolutely necessary  
 to bar the equitable intail with remainders  
 over, although a contrary doctrine had for-  
 merly prevailed in that court. See *Harvey*  
*v. Parker*, 10 Vin. Abr. 266 ; and *Bridges v.*  
*Bridges*, 2 Ves. Jun. 120. The observations  
 of *Lord Alvanley*, then Master of the Rolls,  
 in the latter case, are very apposite to this  
 purpose. His language was, “ This court  
 “ has determined that such equitable estates  
 “ are to be held perfectly distinct and se-  
 “ parate from the legal estate ; they are to  
 “ be enjoyed in the same condition ; intitled  
 “ to all the same benefits of ownership, dis-  
 “ posable, devisable, and barrable, *exactly*  
 “ as if they were estates executed in the  
 “ party.”

The observations of Lord *Hardwicke*, in *Radford v. Wilson*, 3 Atk. 815, are, it should seem, (and such indeed is the prevailing opinion,) to be understood, as perfectly consistent with his language in *Pullen v. Middleton*. His observations merely imply that an intail, legal or equitable, may be barred by surrender, when the custom of the manor does not prescribe a different mode of barring the intail. At all events the customary mode of barring the intail of the legal estate of copyhold lands, ought to be observed, in barring the equitable intail of such lands; and it would not in any case be safe to adopt a different course of practice.

Lord Chief Justice *Bridgman* (n) seems to have decided, that an estate-tail in copyhold lands, may be barred by a fine, with proclamations, in the court of common pleas.(n) On this determination it is to be remarked, that the lands are within the jurisdiction of that court, though they are more properly impleadable in the lord's court, and in this respect they are under a different predicament from the lands of the tenure of ancient demesne. This point is noticed, as a means of avoiding the rapacity of some lords of

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(n) *Taylor v. Shaw, Carter*, 21.

(n) See also the observations of Lord *Hardwicke* in *Pullen v. Middleton*, 9 Mod. 484.

copyhold manors, who refuse to permit equitable owners to suffer a recovery, or pass a surrender, in the lords' court without being admitted, or at least paying fines as if they were admitted.

It is, however, to be observed, that some gentlemen, whose opinion is entitled to the highest respect, are not satisfied that a fine of copyhold lands will bar the trust of a married woman in those lands; of course it is not safe to rely on a fine under these circumstances, though it is very proper that the point should be kept in mind, and whenever circumstances require it, pressed to a decision. Can a person claim any interest in copyhold lands in opposition to his own fine? Is he not estopped? That the decision will be in the support of the validity of the fine, is a point on which little doubt is entertained by the writer of these observations. The same point applies to alienation by married women of equitable interests in copyhold lands. But it is not apprehended that a recovery in the courts of Westminster hall will have the same effect as a customary recovery: since a *customary recovery* is the prescribed mode of barring an intail (o).

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(o) *Oliver v. Taylor*, 1 Atk. 474.

*Of the Recovery Deed.*

It has been shewn, that the tenant to the writ of entry may be made by fine, feoffment, grant, bargain and sale, lease and release; or, in short, by any assurance which will have the effect of passing the freehold to the intended tenant.

The point to be regarded is that there shall be a conveyance effectual for this purpose; and that it shall be made in due time. In general, also, and with great propriety, there is a declaration of the uses of the recovery, for the purpose of rendering the title certain, by an express declaration, instead of suffering it to depend on a resulting use in favour of the tenant in tail, or the averment of an use in favour of the recoveror.

It has been noticed too (*p*), that a fine levied to a person, afterwards named tenant, in a recovery, though at a distant period, will be considered as originally levied, to the use of the conusee, so that he may be deemed a good tenant to the writ of entry. This case supposes no uses to have been declared in favour of the conusor, in the fine, or of any other person than the conusee.

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(*p*) *Altham v. Anglesea*, Gilb. Eq. Ca. 10. et *supra*.

In treating of the recovery deed, it will be proper to consider,

1st, In what cases a recovery deed is necessary,

2d, Its formal parts.

And 1st, when a fine is levied, and a recovery is to be suffered to the conusee, a deed either of conveyance or of declaration of the uses of the fine is not essential to the validity of the recovery.

So when the writ of entry is brought against the person, who already is the owner of the freehold; a conveyance by deed or fine is not of absolute necessity. In practice a conveyance will frequently occur, and is proper, even in cases attended with these circumstances.

In all other cases, since the intended tenant would not have the freehold without a conveyance made to him, it is of the first importance that such conveyance shall be made, and that the tenant shall have, or *appear* to have, the freehold *during the term*, in which the recovery is suffered

But to guard against the loss of recovery deeds, &c. the statute of 14 Geo. II. hath enacted those provisions which have been already noticed; and thus hath made a period of twenty years, with enjoyment under the recovery, presumptive evidence of the existence of those deeds by which a tenant to



the writ of entry might have been made.— And in many cases, from circumstances, a presumption of a surrender of a prior estate for life, will be made, for the purpose of supporting the validity of a recovery. The rules of evidence which govern the doctrine of presumption are noticed in a former page.

2dly, Of the formal parts of the recovery deed.

These are,

1. *The Date.*
2. *The Parties.*
3. *The Recitals.*
4. *The Testatum Clause, and Consideration.*
5. *The Operative Words.*
6. *The Parcels.*
7. *The Habendum and Use.*
8. *The Declaration of the Intention of the Conveyance, and the Agreement to suffer the Recovery.*
9. *The Declaration of the Uses.*

### 1. *Of the Date.*

The rule of the common law which required that the tenant should have the freehold before judgment was given, has already been noticed, and the statute of 14 Geo. II. c. 20, already cited, has enacted

that “ from and after the commencement  
“ of this act, every recovery already suffered  
“ or hereafter to be suffered, shall be deemed  
“ good and valid, to all intents and pur-  
“ poses, notwithstanding the fine or deed  
“ or deeds making the tenant to such writ  
“ should be levied, or executed, after the  
“ time of the judgment given, in such re-  
“ covery, and the award of the writ of scisin  
“ as aforesaid, provided the same appear to  
“ be levied or executed before the end of  
“ the term, great session, session or assizes,  
“ in which such recovery was suffered ; and  
“ the persons joining in such recovery had  
“ a sufficient estate and power to suffer the  
“ same as aforesaid.”

To bring a case within this statute, the deeds should at least *appear* to be dated within the term of which the recovery shall be suffered ; and that the title may be free from doubt, the deeds should be *executed*, as well as *appear* to be dated, within the term.

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## 2. *Of the Parties.*

In a recovery deed, the *proper* parties either alone, or jointly with other persons, as circumstances may require, are

1. The person who has the freehold.
2. The intended vouchee.
3. The intended tenant.
4. The intended demandant.

Other parties may be added, with a view to give to the deed some other operation than that of suffering an effectual recovery.

And *first*, of the person who has the freehold.

When the freehold is in one person *solely*, it is sufficient that there is a conveyance from that person.

When the freehold is in several persons, they should all join ; at least for those shares of which the recovery is to be suffered : since the recovery will be defective as far as there is the want of the concurrence of the freeholder. So when there is a doubt whether the freehold is in one person or in another, the concurrence of each of these persons should be obtained, or the title considered as doubtful : and as often as the recovery is of an *aliquot* part of the lands, care must be taken to procure the concurrence of the person who has the freehold in that *parti-*

cular share. Also when the object of the recovery is to bar an intail of the *legal* estate, the attention must be directed to procure the conveyance from the person or several persons, in whom the *legal estate of freehold* is vested ; whether he or they is or are a mortgagee or mortgagees, trustee or trustees, or beneficial owner or owners ; and when a recovery is to be suffered to bar an intail of the equitable ownership, there is equal necessity, and for that reason there should be equal anxiety, to have a conveyance from the person who is the owner of the estate of freehold in the equitable or beneficial ownership ; whether that ownership is conferred by a legal or an equitable estate.

It often happens that the intended vouchee has also the freehold. When the same person who is to be the vouchee has the *freehold*, the number of parties will be reduced, and the observations respecting the owner of the freehold are then, in reference to the freehold, equally applicable to the tenant in tail. Though the freehold is in one person, and another person is to be the vouchee, still the practice is that the tenant in tail should join in making the conveyance to the intended tenant to the writ of entry.—This is rather advisable, in compliance with practice, and the caution on which it is founded, than absolutely necessary.—The recovery

would be good even though the tenant in tail should not join in the granting words of the conveyance. The freehold will pass from the person in whom it is vested : and this is the essential point.—Beyond this, all is caution ; and the want of attention to it cannot affect the validity of the title : and in cases which involve the doctrine of merger, or the destruction of contingent remainders intended to be preserved, care should be taken that the tenant of the freehold, and the tenant in tail do not join in the same conveyance ; or if they join, that they create only a particular estate, so as to leave a reversion in the freeholder.

Before a recovery is suffered, the title should be thoroughly and minutely investigated, to obtain the concurrence of all those persons who can, by any construction, or under any rule of law, or any conveyance, will, mortgage, &c. be considered as having the freehold. To these observations there is the exception, already stated, of the freehold in lessees under freehold leases : and also in persons who have the freehold of certain parcels of a manor, when the recovery is suffered of the manor, and the reversion remains parcel of the manor. This previous investigation will be a step towards rendering titles more complete than they are now found to be.

The cautions proper for persons who assist

in suffering recoveries, in right of particular estates to which powers are annexed, or who wish to guard against the consequences of a forfeiture, or the merger of their estate in the inheritance; or the destruction of contingent remainders; have been noticed in the former part of this chapter.

*2d. Of the Vouchee.*—The intended vouchee or vouchees should be the tenant or tenants in tail, by whom the recovery is to be suffered. Though in some cases, the tenant in tail may not be a necessary party in the grant, yet, in the declaration of the uses of the recovery, he is, when he continues owner of the estate-tail, materially interested. To the extent of his ownership, he is the person from whom the uses must move; and for this reason, his concurrence in the declaration of the uses is to be regarded as of the first importance. (q)

A doubt has sometimes been expressed whether several persons being co-parceners, or *tenants in common*, in tail, can join in the same recovery. On that point the opinion of a highly eminent lawyer was to this effect: “ I always thought it doubtful, but rather  
“ inclined to think it bad in an amicable, as  
“ I think it would be in an adverse action,  
“ against all not claiming merely under the  
“ parties, and, consequently, against the  
“ issue in tail and those in remainder.”

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(q) *Roe v. Popham*, Dougl. 21.

The answer to this objection was, That one recovery by the co-heirs A. B. and C. D. of their respective shares, in which they shall be vouched, and vouch over will bar their estate-tail in their respective shares: for it must be remembered, that these persons are *co-heirs*, and co-heirs not only may be, but, in point of form, ought to be vouched jointly; and the general practice has been to join several co-heirs in the same voucher. Indeed, it is said, that upon warranty by the ancestor, one parcener cannot be vouched, without the other, Vin. Abr. vol. 22, p. 293, cites 11 Hen. IV. 20, b; but this must be understood in a qualified sense, namely, that the vouchee may, by special pleading, shew that he is only one of the several co-heirs, and compel the tenant to vouch him, jointly with the other co-heirs; but if he omits to do this, still the recovery will be good against the vouchee, and all persons claiming under him: and nothing is more common in practice, than for one of several co-heirs to be vouched *solely* as to her share, and no doubt was ever raised on the validity of a recovery so suffered. The recovery may, in a case thus circumstanced, be supported on the ground of a supposed warranty, by the vouchee *personally*; and there being a voucher over and recompense, the issue, and those in remainder, are precluded from

claiming under the old intail. And even a joint voucher of *tenants in common* in tail, is warranted by practice, and it is, I apprehend, by law ; and Mr. *Fearne's* opinion in his posthumous works, p. 338, goes even further, that a common recovery suffered on a voucher of two persons, who have distinct estates-tail, in distinct parcels of land, will bar the several estates-tail.

It is admitted that, in 22 Vin. Abr. 93, which cites 28 Edw. III. 90, b. it is said, that two tenants in common cannot vouch jointly. But this must be understood, not as a substantive proposition, founded on an objection in law, or on a point of form, against a joint voucher by tenants in common, but as admitting the right, in the person whom they vouch, to counterplead the warranty. And the case in 42 Edw. III. 16, b. and 17, proves that if several are vouched jointly, and they accept the tenancy of the *intirety*, they are estopped from pleading *several tenancy*; in consequence they are bound to vouch *jointly*. And in the case of *Morgan v. Culpepper*, reported in Keb. 863, and Siderf: 241, four of eight persons, having a joint freehold, and several inheritances in tail, were vouched jointly, and vouched over, and no doubt seems to have been entertained of their estates-tail, in their respective shares having been barred, although the recovery did not



bar the shares of their companions in the tenancy.

On the whole, the impression is, that one recovery suffered on a joint voucher of several tenants in common, or of several coparceners, is good in point of law, to bar the estates-tail in their shares of the lands, even although these shares are in distinct tenements, and the tenements were intailed by distinct gifts; for supposing they had by one and the same deed, or by *several* deeds, conveyed these lands to a tenant, and the demandant, having a title to all the lands, were to demand them by one writ against the tenant, and the tenant having a warranty of all the lands, was to vouch the tenants in tail, what objection exists against his doing this, or against their vouching over? None presents itself; on the contrary, to demand all the lands, by one writ, is consistent with the title of the claimant, and avoids the circuity of several actions, for that which may as well be recovered by one action. That a writ so brought, is good, is assumed to be clear, from the circumstance that, no answer suggests itself against the writ in point of form; and if the writ is well brought, all the other proceedings seem of course. There is a rule, indeed, that in all real actions, founded upon a title, as *Escheat*, *Formedon*, &c. the demandant cannot join

lands, accruing by two several tenures, or by two several gifts, in the same writ; *Buckmere's case*, 8 Co. 86: but the very rule, provided for this particular case, proves that when the action is not founded on a title, viz. on a title to be disclosed by the writ, one writ may be of distinct parcels, comprised in different gifts: and a writ of entry, on which a recovery is suffered, is not founded on a title. This very distinction was taken in *Buckmere's case* already cited. It is there said, but all actions real, which are founded upon wrong or deforcement, and do not comprehend any title in them, there the demandant may demand in one writ, divers lands and tenements, which come to him by several titles. The instance given, is, that if divers lands descend to me, and I am disseised or deforced of them, I may have a writ of right, or a writ of entry, in nature of an assize, and comprehend all these rights in one writ, because in these writs no title is made in the writ."

On the concurrence of two persons having distinct estates-tail in distinct lands, one in one tenement, the other in another tenement, the opinion of Mr. Fearne was, "*fieri non debuit, sed factum valet.*" His reasoning on the case will be found in his posthumous works, p. 338.

3d. *The intended Tenant.*—In general, he should be named a party to take the

grant of the freehold. Whether he takes the freehold, under an immediate conveyance to him, or under a declaration to his use, is of no consequence.—Let him have the freehold, and all that regards him is accomplished. However, when he is to have the freehold, through the medium of a declaration of use, instead of an immediate conveyance to him, he himself, or another person, must be named as the grantee, since no use can arise without a conveyance to supply a seisin to the use, except in the cases of a covenant to stand seised, and then the use is supplied from the seisin of the covenantor; or in a bargain and sale; in the latter case the bargainer is seised to the use of the bargainee; and the use is, in each case, executed into estate by the statute:—and when the tenant is to have the use under a declaration on a conveyance, the conveyance must pass a seisin at the common law, and not be open to the objection, that the use is a use on an use, and for that reason a mere trust.—This objection occurs when there is an appointment, or a bargain and sale under the statute of enrolments, to A. and his heirs, to the use of B. and his heirs; the appointee or bargainee takes the first use, and the ulterior use is a mere trust: an use in the 2d degree, not executed by the statute, as

will be more fully shewn in this and the subsequent chapters.

A person resident near the court, in which the recovery is to be suffered, should be named the tenant, to save the expence of a *dedimus*, to take his warrant of attorney; and in general it is preferable to name one person, rather than two persons. When two sons are named, the writ of entry must be brought against both these persons, and they must both appear and vouch over. The want of appearance, or voucher, by one would vitiate the recovery to the extent of his share.

The recommendation of naming one person instead of several to be the tenant must be understood with the qualification; that only one recovery, or several recoveries in one court is or are to be suffered. As often as there are to be several recoveries, in distinct courts, there will be a great convenience and propriety, in naming a tenant for the lands in each distinct jurisdiction. In this instance, the lands in each particular jurisdiction should be conveyed to, or at least, to the *use of*, the person who is to be the tenant in the recovery to be suffered in that jurisdiction. On this point, the appropriate observations will be found in a former part of this chapter.

It is usual for the tenant to execute the recovery deed. This is proper. The want, however, of his execution will not be a defect in the title. It is rather on account of the declaration of uses, than the validity of the recovery, that the deed is usually executed by the tenant, and as the uses are to arise from a conveyance made to the tenant, these uses arise on the recovery without any other assistance from him, than his acting as the tenant. By appearing to the writ of entry he precludes himself and all other persons from asserting that he disagreed to the conveyance, and that nothing passed to him. And the judgment against him draws out of him the estate which vested in him.

*4th. Of the Demandant.*—Sometimes a purchaser, sometimes a friend, and sometimes a *stranger*, is named the demandant; and in some instances two persons are named. For the most part no more than one person is named: and it has happened that one person has been named in the recovery deed, and another in the recovery, and sometimes he is required to execute and at other times his execution is disregarded. Neither of these particulars will affect the title. So as a demandant or demandants is or are named, in the proceedings, towards

the recovery, and the person or persons so named shall live till judgment given, the recovery will be good. His death before judgment would put an end to the proceedings; when he lives till the proceedings are complete, the uses will arise, without any concurrence by him in the recovery deed; since the uses arise from the seisin which passes to him, and he takes in *modum donantis*, and is bound by the declaration of uses in the recovery deed, so as this declaration is in the common form. That the uses may arise, seisin must be delivered; and should the demandant die before seisin is delivered, a writ of seisin must be awarded, and seisin delivered to his heirs, and the writ of seisin returned (*r*), as a means of the execution of the uses, under the statute for transferring uses into possession.

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(*r*) *Witham v. Lewis*, 1 Wils. Rep. 48. 4 Bro. P. C. 504.

### 3. *Of the Recitals.*

The deed or will by which the intail is created, ought, in most cases, to be recited, or at least there should be a reference to the same, and all such facts should be disclosed, as shew the right to suffer the recovery with effect. This will greatly aid the title at some future period. It will lead to the documents on which the title is grounded; or, should they be lost, or destroyed by fire, will tend to satisfy future purchasers, that the title is correctly deduced.

The object should be to shew, *first*, that the freehold is in the person by whom the freehold is to be conveyed; and for that purpose the determination of all prior estates which existed under the deed or will by which the intail was created, should be shewn, and the creation of the estate-tail, and the consequent right to suffer the recovery; and when the fact warrants it, the determination or failure of all prior estates-tail, the state of pedigrees, &c. should be disclosed by the recitals.

This, however, can be done, with prudence, in those instances only in which the title rests on clear grounds, and is not involved in difficulty. On the one hand, no conveyancer of integrity will state that as a fact which

does not exist; on the other hand, it is his duty to keep his client's title free from a disclosure, which, at a future period, might involve the title in increased difficulty, or raise a suspicion of its validity.

In general, also, there are other recitals shewing the agreement to suffer the recovery; and such recitals will be found in the forms of recovery deeds, added in the appendix; other varieties of these recitals, adapted to particular cases, are also added in the appendix.

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#### 4. Of the Testatum Clause.

This clause generally shews the object of the deed, and for the most part that object is expressed in these, or the like terms, "*And for docking, barring, and destroying all estates-tail, of and in the ——— lands and hereditaments hereinafter described, and also released or otherwise assured, or intended so to be, and all reversions and remainders expectant or depending on the same estate-tail, and all conditions and collateral limitations annexed thereto, or affecting the same, and for settling and assuring,*" &c. And when different objects are within the scope of the deed, these also are for the most part added. This is form, and not substance; and the omission is immaterial.

Nor is any consideration necessary to the validity of a recovery deed, as such, with the exception that a bargain and sale cannot raise any use, and, it follows, cannot pass any estate to the intended tenant, unless it is founded on a *consideration* of money or money's worth. Therefore, that a recovery deed, grounded on a bargain and sale, which must operate as such, may be good, there must be a consideration of money, or money's worth. An instrument, in the form of a bargain and sale, may, no doubt, open

rate as a grant ; and when the bargain and sale is void, as such, either for want of a proper consideration, or inrolment within due time, it should be considered, whether the intended bargainer had an estate in remainder or reversion. Admitting he has a remainder or reversion, or that the subject of the deed is an incorporeal hereditament as a rent or advowson, the deed may operate as a grant, notwithstanding the want of any consideration or inrolment. In *Barker and Keate* (r), the tenant to the writ of entry was made by an instrument in the form of a lease and release : and no consideration was expressed in the clause of grant in the lease. In the reddendum, a pepper-corn, which is money's worth, was reserved ; and, on this ground, the lease was considered as a good bargain and sale for a year ; so that there was an estate for a year capable of enlargement ; and it was enlarged by the release ; and the releasee had the freehold, and the recovery was duly suffered, since the writ of entry was brought against this releasee.

This part of the deed is intimately connected with the two divisions, which treat of, 1st, the person who has the freehold, and 2dly, the intended tenant ; for the office

of this clause of the deed to introduce an effectual grant by the person who has the freehold to or in favor of the person who is intended to be the tenant; or, at least, it must introduce a grant, in favor of some other person, to uses, under which the freehold may be vested in the tenant.

From subsequent parts of this treatise, it will be collected that a grant may be good, though the name of the grantee is omitted, in the words of the intended grant, from him, provided the intention, that he shall grant, can be collected from the deed.

So a grant may be good, though the grantee is named in the habendum and not in the grant; and even though some other person is by mistake named in the grant.

On this and other subjects connected with the form of the grant, the observations in the chapter *Release*, will afford the necessary information. That the deed shall be sufficient to pass the freehold is the object to be regarded both in preparing it, and considering the effect of the recovery, with a view to support its validity.

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### 5. *Of the Operative Words.*

These ought, in point of form, to vary with the nature and mode of operation of the recovery deed. They must be sufficient to pass the estate.—In the more early period of the history of the laws of property in this country, particular words only were allowed a particular import, and were considered as peculiarly adapted to particular assurances. In modern times, this rule has been relaxed. No more is now regarded, than that there shall be such words as declare a manifest intention to convey. These words, however informal, will operate.

The rules which now prevail, are—*Benigne faciendæ sunt interpretationes chartarum, propter simplicitatem laicorum, ut res magis valeat quam pereat*; and *verba intentioni, et non e contra debent inservire*; and deeds intended, and made to operate one way, may operate another way, if the intention of the parties, cannot take place, unless they operate a different way from what they were intended. Judges ought to be curious and subtle, to invent reasons and means to make acts effectual, according to the just intention of the parties. More consideration is to be had for the substance, to wit, the passing the estate according to the intention of the

"parties, than the shadow, to wit, the manner  
"of passing it (s):" and the application of these  
rules will be shewn in the chapter on *releases*.

These words of grant ought to proceed  
from a person as grantor, in favor of the per-  
son named as grantee, and the observation  
respecting the nomination of these persons  
and mistakes in these particulars, will be  
found in the same chapter.

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(s) *Roe v. Tanager*, Willer's Rep. 682.

6. *Of the Parcels.*

In all deeds, and in none more than in recovery deeds, particular attention should be paid, that all the parcels intended to pass, shall be included, and that none shall be included which it is the intention of the parties to omit.—The points proper to recovery deeds, are not to include more lands than are intended to pass, and to comprise either by general or special words, all the lands to which the recovery is to extend, and restrain general words to those townships, parishes, &c. which are to be named in the recovery. When the parcels are of considerable length, or the description of them is attended with nicety, or involved in any difficulty or uncertainty, general words should be added, extending to all the townships, parishes, &c. named, or to be named in the recovery, so as to embrace, under these general terms, any parcels omitted out of the particular description. Many a title has been supported under these general words, which would have been defective, or at least doubtful, as far as it depended on the particular description.

Such general words may be to this effect:—  
*And all other, the manors, messuages, farms, lands, tenements, and hereditaments, situate, ly-*

ing, and being in the several towns, parishes, and places of A. B. C. and D. in the said county of ~~which the said~~ became, was, or is, tenant for an estate-tail, either in possession, reversion, or remainder, under or by virtue or means of the said hereinbefore mentioned or recited ~~and every part and parcel of the same, with their and every of their, rights, members, and appurtenances.~~

These words, however, may require considerable variation, as words of restriction: or words to embrace lands taken under exchanges; made under inclosure acts, partition, lands purchased, and settled to the like uses, &c. &c.

When lands have passed by will under a general denomination, the recovery should have the parcels from the last purchase deed: or if they are materially and substantially varied, then a new description; but there should be general words, co-extensive in effect with the words of the will, at least, as far as the recovery is to comprise the lands, and the modern description should be connected with the ancient description, that the identity of the parcels, and the application of the more early title deeds, may be rendered obvious, and free from any doubt arising from the change in the description of the parcels.

In relation to the parcels, another object

to be kept in view, is to have the lands sufficiently ascertained by particular description, or by general words, to render the intention to include them free from all doubt. This will facilitate an application, to amend the parcels in the recovery; should circumstances render it necessary to make such an application, to the summary, and discretionary jurisdiction of the court, in which the recovery is suffered.

The recovery deed to be formal, should also have the clause of the "reversion," &c. Also the clause of "all the estate," &c. except a particular estate, and not the whole interest of the parties is intended to pass.

When the sole object is to suffer a recovery, the clause granting deeds, is unnecessary and even informal. On the other hand, when the recovery deed is part of a transaction, for the assurance to a purchaser, the usual clause of grant of deeds, will be added with great propriety.



7. *Of the Habendum.*

The habendum should be the same in this, as in other deeds, looking only to the object of passing an estate of freehold, to the person who is to be the tenant in the recovery:

Frequently, and for the most part, the fee is conveyed to the tenant. But whether he takes the fee, or any other estate, so as the same is an estate of freehold, the recovery will be equally free from objection. Even the lowest denomination of an estate of freehold is sufficient, as far as the validity of the recovery can come in question; and even though a mere estate of freehold passes by the deed, the fee may be conveyed by the united operation of the deed and recovery; for the freehold will pass by the deed, and the fee by the recovery; and the uses declared of the recovery will transfer that estate to the person, in whose favor these uses are declared. This follows upon the rule, that whoever comes in as vouchee, comes in of all estates of which he *is or ever was* seised.

These observations suppose the party who has the fee to be named as tenant or as vouchee. For in case a person who has the fee conveys a *partial estate*, and is no party to the recovery, there will remain in him so

much of the estate as is not conveyed by him.

These observations, too, will suggest, that in some cases the fee should be conveyed, and should circumstances of caution require it, it may be conveyed and uses declared, and under these uses, a particular estate may be limited to the use of the intended tenant, and ulterior uses may be declared, according to the intention of the parties. *See form in the appendix.*

It is to be observed, that no benefit will arise from this practice, or caution, except in those instances in which the uses shall be declared in favour of persons not named as parties in the recovery. Nor in this place must it be passed over unnoticed, that the estate arising from a declaration of uses upon a conveyance, cannot be larger than the seisin conveyed to serve these uses.

### *Of the Use.*

When the grant is to the tenant, to the intent that a common recovery shall be suffered, the legal estate will vest in him, without any express limitation of use in his favor.—The declared purpose will prevent the use from resulting, and the grantee will be seised, by the rules of the common law. The

cases of *Altham* and *Anglesey* (t), *Roe v. Popham* (u), *Thrustout v. Peake* (v), are authorities in point, and would support this conclusion, were the proposition not sufficiently clear in itself. As often, however, as the title of the tenant to the writ of entry, is to arise from, or to depend immediately on, a declaration of use, that use must be effectual for the purpose. In the first place, there must be an effectual grant to supply a seisin to the uses, and there must not be any prior use, which will either prevent the execution of the use in favor of the tenant, or confer a title to the immediate freehold, on any other person.

When the title of the tenant to the freehold is to arise from a declaration of use, the nature of the conveyance must admit of a declaration of use, to be executed into estate, and such use must be declared. On a bargain and sale to A. to have its effect under the statute of uses, the bargainee will take the use, and his estate will be executed by the statute. A subsequent declaration of use, in favor of B. will be a use of the estate of A. and this is an use on an use (w),

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(t) Gilb. Eq. Cases, 16.

(u) Doug. 25.

(v) Str. 12.

(w) Tyrrell's Case, Dyer, 155, a.

and cannot be executed by the statute. Supposing the estate to be legal, the legal estate will abide in A. and he and not B. is the proper person to be named tenant of the freehold. It is, on one hand, to all bargains and sales by owners of the legal estate, and, on the other hand, to those assurances only which are to operate on the legal ownership, that these observations are applied.

Perhaps, in support of an equitable recovery, a court of equity would consider the equitable freehold as passing to B. since the intention of the parties is evidently directed to the object of placing the equitable freehold in him, and, in equity, the intention and object of the parties, rather than the form of the instrument, is regarded: and the transaction requires that B. should have the equitable freehold, as the only means of giving full effect to the intention.

Under these circumstances, also, it may be necessary to recur to the point, that the instrument, even as a legal assurance, may be attended with circumstances, which will allow of its operating as a grant at the common law: and any instrument which may operate as a grant, will pass a common law seisin, and uses may be declared with effect, and arise on that seisin. In many cases, this construction might have been resorted to with success, and a title supposed to be

defective, as to the legal estate, might, by this application of the rules of law, have been supported. It remains only that it should be observed, that though a bargainee, whose estate is executed by the statute, has no seisin of which uses can be declared, to be executed by the statute, otherwise than under a new conveyance, or a new contract, proceeding from him, uses may be declared in a bargain and sale, of the seisin acquired by the demandant, or recoveror, in the recovery.—Such uses are free from the technical objection of being uses on an use. They arise, in point of law, from the seisin of the demandant.—In short, they arise from a new conveyance, produced by the effect of the common recovery. — Appointments made through the medium of a power in, or arising under, a conveyance to uses, are open to observations very like to those made on bargains and sales.—The appointee takes the immediate use: and all ulterior uses declared of his estate are uses on uses, and have no effect on the legal estate; they are good only as trusts, conferring an equitable ownership. Thus when A. has a power over the use, and he appoints to B. and his heirs, to the use of C. and his heirs, B. takes the use, and the use declared for the benefit of C. is merely a trust. This subject will be

more fully considered in the chapter on *appointments*.

When circumstances require that a partial estate of freehold should be limited to the intended tenant, and that other uses should be declared, these uses may be declared in the mode which has already been pointed out, for that purpose, and as shewn in the form in the appendix.

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### 8. *Of the Agreement to suffer the Recovery.*

In every well drawn deed, the agreement to suffer the recovery is fully and clearly expressed.—The common form of this clause is in the appendix.

A shorter form is also added. The variations in the form, arising from circumstances, are noticed in the opposite pages.

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9. *Of the Declaration of Uses.*

To the clause prescribing the mode of suffering the recovery, there is generally added a declaration of the uses of the recovery itself.—This declaration should be in the form in the appendix, or to that effect, *mutatis mutandis*.—It seldom happens, that this declaration is omitted. When it is omitted, the use will result (*x*), unless from the consideration paid by the demandant, or from some other circumstance, the beneficial ownership is evidently to remain with him. The cases of *Moxon v. Moxon*, and *Hodges v. Fowler*, in the Exchequer 1777, and Com. Dig. Uses, D. 2, p. 622, are authorities that the use will result, and it will result to the different parties, according to their former ownership, that is, to tenant for life, for life, &c. &c. with this difference only, that a tenant in tail, instead of taking back an estate-tail by resulting use, will take back an estate in fee, depending on the title to his estate-tail.

Mr. *Cruise*, in his Essay on Uses, p. 205, adverts to the title, depending on the resulting use as doubtful, on the ground that it is not

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(*x*) *Armstrong v. Wolseley*, 2 Wils. 19.  
*Jones v. Morley*, 1 Lord Ray. 291.  
*Co. Litt.* 23, a; 271, a.



clear that the use which results is in tail or in fee; but the cases seem to admit of no doubt on this point, for though they say the recovery shall enure to the "former uses (y)," nothing more is meant, than that the parties shall take according to the estates which they had at the time of suffering the recovery (z).—Indeed, *Mr. Cruise* considers the case of *Nightingale v. Ferrers*(a), as a direct and positive authority, that where a tenant in tail suffers a common recovery without any declaration of the uses, the resulting use is to him in fee.—One, however, of our best read lawyers doubted on this point.—But there were special circumstances in the case, namely, a partial declaration of the *uses*, without any declaration of the use of the *fee*: and on the contrary a declaration that the recovery should not enure to any other uses. On the same case *Mr. Fearne* gave an opinion in these terms.—“I conceive that where a  
 “tenant in tail is vouched in a common  
 “recovery, it bars the estate-tail, and all re-  
 “mainders and reversions thereon depend-  
 “ing and expectant, and expands the estate  
 “into a fee-simple, abstracted from the

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(y) *Walker v. Snow*, Palm. 359.

(z) *Argol v. Cheney*, Latch. 32.

(a) 3 P. W. 207.

“ declaration of the uses of such recovery :  
 “ because a fee-simple is recovered, and  
 “ therefore where no use of the fee is de-  
 “ clared in such a case, and there is no consi-  
 “ deration to raise the use in the recovery, it  
 “ results to the tenant in tail in fee.<sup>2</sup> Roll. Abr.  
 “ 789, pl. 1. Godbolt, 180.—*Burg v. Tay-*  
 “ *lor*, Gilb. Law of Uses, 61, 64. And if such  
 “ recovery be with the concurrence of a pre-  
 “ ceding tenant for life, then the use also  
 “ results to him for his life. Vide *Walker v.*  
 “ *Snow*, Palm. 359; and consequently, I  
 “ apprehend, that where the use of such  
 “ recovery is only partially, and not com-  
 “ pletely limited, as far as the limitation  
 “ fails, that is, the unlimited use results in the  
 “ same manner as the whole use would have  
 “ done, if there had been no limitation of  
 “ any part of it.”

Frequently, a title depends partly on a recovery, and partly on a will, made by the person who suffers the recovery; and as a will is revoked by the recovery, if suffered subsequently to the will (*b*), the attention should be directed to see, either that the will is subsequent to the recovery, or if prior, that

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(b) *Dister v. Dister*, Lev. 108.

*Marwood v. Marwood*, 3 P. W. 163.

*Darley v. Darley*, Buller's N. P. 267, 7 Bro. P. C. 177.

*Jones v. Leigh*, Dom. Pro. 1744.

it has been republished since the recovery; and in general it is prudent to advise a person, who suffers a recovery, to republish his will, if he has previously made any.

In *Selwyn v. Selwyn* (c), the will was made before the recovery was suffered, but after the deed to lead the uses was executed.—In that particular case the will was supported, on the ground already noticed.

The prevailing opinion, some few years ago, was, that the tenant in tail, by suffering a common recovery, acquired a *fee-simple*, and that this fee-simple was a new estate. For this reason, the owner of the estate was considered as the *first purchaser*, so that his estate was descendible, in all cases, to his heirs *ex parte paternâ*.—The law is now settled on this point, and the distinctions which are established are:

*First*, If tenant in tail by *purchase* suffers a common recovery, to the use of himself in fee; as he was tenant in tail by *purchase*, the fee taken under the recovery will descend from him to his heirs *ex parte paternâ* (d). And this distinction has been applied as well to *copyhold*, as freehold lands (e). Though upon principle,

(b) 2 Burr. 1131.

(d) *Martin v. Strachen*, Str. 1179, 1 Will. 3, 66.5 T. Rep. 107.

(e) *Crowe v. Baldwere*, 5 Term Rep. 104.

the case of copyhold lands appears to be very distinguishable from the case of freehold lands; since in one case there is a surrender and a re-surrender; two distinct common-law conveyances, like a feoffment and re-enfeoffment, or a fine *sur grant et render*; and in the other case, there is, in point of law, merely a conveyance to uses; and it is wholly under the doctrine of courts of equity, as distinguished from the doctrine of the common law, that the use, in its fiduciary state, and now, since the statute of uses, the old use, whether it is taken under an express limitation, or results, descends in the same manner as the estate was descendible prior to the conveyance.

*Secondly*, If tenant in tail by descent from his mother, or any other ancestor, suffers a common recovery, to the use of himself in fee, the person *in whose favor* the intail was originally created, shall be considered as the purchasing ancestor; and the fee, taken under the recovery, will be descendible exactly in the same manner, as if the donee in tail had been the purchaser of an estate in fee-simple, instead of being the purchaser of an estate-tail. The reason of this rule in courts of equity, and its adoption by courts of law, will be considered in the *Essay on the Quantity of Estates*, when that book shall be republished.

This point should be particularly attended to in those cases, in which the title is derived by descent from a tenant in tail. Indeed, in every case in which a title is made by a person as heir, care should be taken to see, that such person is heir to the former owner, as far as respects the estate in question.

This chapter will be closed by the observation that in investigating a title, as depending on a recovery, the attention should be particularly directed to these points.

*First*, That there appears to have been a good tenant to the writ of entry at the time of suffering the recovery, or before the end of the term, in which the recovery is suffered.

*Secondly*, That the person who is vouched had either in point of estate, or right under an estate once vested, an estate-tail, and that he vouched over.

*Thirdly*, That execution has been sued, and seisin delivered on the recovery: and

*Fourthly*, That all the proceedings are regular.

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## CHAP. II.

### *On Fines.*

**A FINE** is an assurance by matter of record. It is founded on a supposed previous existing right. Hence the writ which requires the party to perform his covenant, is the foundation of the fine, and the commencement of the proceedings (*f*).

The parties to a fine are,

*First*, The plaintiff, frequently denominated the *conuzee*.

*Secondly*, The deforçant, generally denominated the *conuzor* (*g*).

Sometimes the plaintiff *conuzee* or grantee is the person who is to have the benefit of the fine. More frequently he is named, merely for the purpose of receiving the estate, that uses may arise from his seisin.

The deforçant is the person by whom the

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(*f*) 2 Black. Com. 349.

(*g*) Shep. Touchst. 2.

fine is acknowledged, and consequently the person who is the grantor in the fine.

There are several sorts of fine, viz.

1st, A fine *sur conuzance de droit come ceo*, &c.

2d. A fine *sur done grant et render*.

3d. A fine *sur conuzance de droit tantum*.

4th. A fine *sur concessit*.

The *first* of these fines is in more general use, and is to be preferred, except in particular cases, in which a forfeiture might be incurred by levying it.—For if a person who has merely an estate for life of the *legal* estate (*h*), either of a corporeal or incorporeal hereditament (*i*), or who has an estate for life, with a remote estate of inheritance after, and subject to intermediate estates of inheritance, levies this fine, he will forfeit his estate for life (*k*).—So if he accepts a fine of this description, because he thereby admits the inheritance to be in the conuzor (*l*).—So if two tenants for life levy a fine of this sort (*m*), or one of them levies the fine, and the other accepts it (*n*), both their estates will be forfeited. The concurrence of the person who has

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(*h*) Co. Litt. 251, b.

(*i*) Ibid.

(*k*) Pelham's Case, 1 Co. 101.

Garrett v. Blizard, 1 Roll Ab. 655.

(*l*) 2 Lev. 202; Co. Litt. 352, a; 1 Leo. 264.

(*m*) Smith v. Abell, 2. Lev. 202.

(*n*) 1 Leo. 264. 2 Lev. 202.

the immediate estate of inheritance, will prevent the fine from operating as a forfeiture(o).

On this point there is a difference between fines and recoveries; for if tenant for life joins in suffering a recovery with a person who has a remote estate of inheritance, there will not be any forfeiture of the estate for life(p); and no forfeiture will be incurred by a fine levied by an equitable tenant for life.

This fine is an acknowledgment on record of a previous gift or feoffment; and takes its name from this circumstance(q) *Prinâ facie*; without any words of limitation, it passes a fee(r); but it admits of words of express limitation for life or in tail(s); and, when there are words of express limitation, it will pass that estate only which is expressed in the concord; being the clause of grant. And when the grant is confined to that degree of interest, of which the conuzor is the owner, no forfeiture will be incurred; because there is no assertion of ownership to the disinheritation of the reversioner; and such assertion of ownership is the cause of forfeiture.

(o) Bredon's Case, 1 Co. 76.

(p) Doe. on dem. Smith v. Clifford, 1 Term Rep. 738.

(q) 2 Black. Com. 348.

(r) Co. Litt. 9, b.

(s) Hunt v. Bourne, 1 Salk. 340.

Bro. Abr. Fine. pl. 10. Co. Read. 4.



This is that species of fine which is almost invariably levied by the owner of an estate in fee-simple, or of an estate in fee-tail, either in possession, reversion, or remainder. And when levied by tenant in tail in possession, it has the operation of a feoffment, and (except in particular cases; see Com. Dig. Ch. *Discontinuance*), creates a *discontinuance* of the estate-tail (*t*), that is, it puts an end to, or discontinues the title under the estate-tail, and gives a new title depending on the operation of the fine, considered as effecting a *tortious alienation*.

When this fine is levied by a person who is *seised* of an estate, it gives or transfers the seisin, either for an estate in fee, or for the time expressed in the concord of the fine; and *uses* may be, and generally are, declared of this seisin.—And if no uses are declared, the use will result (*u*), unless the grant is for a particular estate, or except there is some circumstance to keep the seisin in the *conu-see*.—And when the use results to the former owner, it will result according to the ownership which he had at the time of levying the fine, except that his estate-tail, if any, will, in case there is a *discontinuance*,

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(*t*) Co. Litt. 325, a; 1 Co. 44.

(*u*) Co. Litt. 23, a; 271, a.

be a fee-simple (*x*), and if there is no discontinuance, a determinable fee (*y*).

So if uses are declared only of part of the estate, or of part of the lands, the use will result for the residue of the estate, or for the residue of the lands (*z*): except such resulting use would be contrary to the implication of law, as immediately annihilating a particular estate expressly limited to the conuzor. And whenever the use results to the conuzor in fee, or is expressly limited to him, this use will be descendible (except, perhaps, and query, in the case of a discontinuance) exactly in the same manner as if the first purchaser of the estate of which the party was seised, at the time of levying the fine, had been the first purchaser of the estate arising from the use so limited or resulting (*a*).

Respecting the *discontinuance*, which may be created by this fine, it must be remembered, that no one except the person *actually seised of an estate-tail in possession*; that is,

(*x*) *Armstrong v. Wolseley*, 2 Wils. 19.

*Sir Edw. Clere's Case*, 6 Co. 17.

(*y*) *Machell v. Clerk*, Lord Raym. 778.

*Doe ex dem. Gregory v. Whicelo*, 8 T. Rep. 211.

(*z*) Co. Litt. 23, a; 271, a.

*Woodliffe v. Drury*, Cro. E. 439.

Co. Litt. 22, b, 23, a.

(*a*) *Fenwick v. Mitford*, 1 Leon. 182.

*Earl Bedford's Case*, Poph. 3.

an estate which gives a right to the immediate freehold, can discontinue the estate-tail (b).

In *Seymour's case* (c), the tenant in tail had made a bargain and sale in fee, and afterwards levied a fine (which was a perfectly distinct transaction) to the bargainee: and it was held that this fine did not create any discontinuance.—The ground of that determination was, that the tenant in tail was not seised of the estate-tail, but had parted with his estate by the bargain and sale.

In *Doe ex dem. Odeurne v. Whitehead* (d), the tenant in tail conveyed by indentures of lease and release, and afterwards, in pursuance of a covenant contained in the release, he levied a fine to the releasee, and it was adjudged that the lease, release, and fine, were several parts of the same assurance, and that the fine created a discontinuance of the estate-tail, being, in fact, a fine by a person seised of an estate-tail in possession.

It is frequently material to advert to the question, whether a fine does or does not create a discontinuance, as it varies the remedies of the persons not barred by the fine. And it is to be remembered, that if A. is tenant for life, with remainder to B. in tail,

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(b) *Abbot v. Burton*, 1 Salk. 500.

(c) 10. Co. 95.

(d) 2 Burr. 701.

a fine levied by B. with or without the concurrence of A. will not create a discontinuance (e), and no discontinuance can be created of an estate in rents, or other incorporeal hereditaments (f).

When there is a discontinuance, the issue in tail, if not barred by the operation of the fine, &c. or the persons in remainder or reversion, have merely a right of action, and cannot recover the lands, otherwise than by a *formedon in descender, remainder, or reverter*, according to the nature of their title (g).

A consequence is, they cannot maintain an ejectment (h). Another consequence is, that the persons who had the remainder or reversion cease to have any estate; they have merely a right of action; and this right of action cannot be transferred by grant, nor, it is apprehended, is it *devisable*; but it may be extinguished by release, fine, &c. The question is now depending, whether a right of entry, or of action, is devisable.

It is sometimes necessary to advert to these points, in considering the state of titles under abstracts, and in cases for opinion; also in considering the remedies to be pursued to recover any lands which have been intailed;

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(e) Carth. 110.

(f) Co. Litt. 332.

(g) Doe v. Whitehead, 2 Burr. 704.

(h) Ibid.

or the defence to be made to a suit brought for establishing a claim to an intailed estate. Sometimes also a fine *divests* an estate without discontinuing it; and when it divests the estate there is merely a right of entry, and no estate in the persons who have the remainder or reversion. But when there is not any discontinuance, or divesting, the person who has the remainder or reversion in fee continues seised of that estate, and is competent to alien the same, in the same manner as he might have done if the fine had not been levied.

And the issue in tail, unless barred by the fine, or the persons in remainder or reversion, when their right of entry commences, may lawfully enter, and, as a consequence, may maintain an ejectment.

But in the particular case of a fine with proclamations, which divests the estate, (for every fine does not divest the estate) (*i*), an entry must be made for the *express* and *declared* purpose (*k*) of avoiding the fine, before an ejectment can be maintained (*l*): and the demise in the ejectment must be

(*i*) *Carhampton v. Carhampton*, 1 Irish Term Rep. 567.

*Prodger's Case*, 9 Co. 104.

(*k*) *Clerke v. Rowell*, 1 Mod. 10.

(*l*) *Dee ex dem. Campere v. Hicks*, 7 Term Rep. 433.

laid on some day subsequent to the day on which the entry is made.

And it should seem, upon principle, that when the person who had the remainder or reversion, has merely a right of entry, he cannot, after his estate is turned into a right of entry, make any alienation.

When a person has merely a right of action, or of entry, or a contingent remainder, or other future or executory interest, which does not give a vested estate, he should cautiously avoid levying this species of fine (*m*), unless he means to extinguish his interest, for as rights of action, &c. cannot be transferred, the conuzee in the fine cannot derive any advantage from the fine.

On the other hand, strangers to the fine, that is, persons not parties to it, may avail themselves of the fine, to preclude the title of the conuzor in the fine: and a party will not be allowed in opposition to his own fine to assert a title to the lands.—The consequence is, that the fine enures to the benefit of the persons to whom the right, &c. might have been released, exactly the same as if the fine had been a release.—Hence the

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(*m*) Shep. T. 14.

Weale v. Lower, Pollex. 54.

resolution in *Buckler's* case (*n*) ; that if the disseisee levy a fine to a stranger, the disseisor shall hold the lands for ever ; for the disseisee, against his own fine, cannot claim the land, and the conusee cannot enter, and the right which the conusor had cannot be transferred to him, but by the fine the right is extinct, whereof the disseisor shall take advantage.

In *March*, 105, it is reported in a short note, that this point was called in question, and denied to be law ; but the decision in *Moor's* case (*o*) is agreeable to this resolution. And although in *Vick v. Edwards* (*p*), Lord *Talbot* seems to have entertained an opinion, that trustees who had a contingent remainder, might transfer that remainder, and make a good title to the same by the operation of a fine ; that opinion does not appear to have been well considered, or reconcileable with the established authorities.

But a fine *sur concessit* for years, or a demise by indenture for years, will not extinguish the right.—It will merely bind the estate when it shall vest (*q*).

It follows, that in all cases in which it is

(*n*) 2 Co. 56, a.

(*o*) 2 Rolls Rep. 311. Palm. 355.

(*p*) 3 P. Will. 372.

(*q*) *Weale v. Lower*, already cited.

an object to preserve the contingent interest, or the right, and at the same time to bind the contingent interest, when it shall vest, or the right when restored, resort should be had to a fine *sur concessit* for years, or to a demise by indenture for years, as the only effectual means of attaining the object. When a contingent interest, or right in tail is to be binding, a fine *sur concessit* with proclamations will be necessary, with a view to bind the issue in tail.

In extinguishing the right, &c. a fine *sur conuzance de droit tantum*, or a fine *sur grant et render*, or a fine *sur concessit* in fee, will have the same operation as a fine *sur conuzance de droit come ceo*, &c.

Secondly, A fine *sur grant et render* is now nearly obsolete in practice.—It consists of two parts.

1st, Of a grant.

2d, Of a render.

And has the like operation as a feoffment and re-enfeoffment.

Hence if a man seised in fee, *ex parte maternâ* grants to A. and his heirs (*r*), who renders the same lands to the original conusor and his heirs, the estate taken under the render will be descendible to the heirs, *ex parte pa-*

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(*r*) Co. Litt. 316, Dyer, 237, b.

Price v. Langford, 1 Salk. 92.



*terná*, because the conusee in the render is the first purchaser of that estate, and he takes the same by a conveyance at the common law, and not under an use arising from his former ownership.

By the rules of the common law, a man cannot grant to himself, or to his wife, (who is considered as part of himself) nor can he grant to a stranger, reserving to himself a particular estate.

For this reason, prior to the statute of uses, settlements were made by feoffment and re-enfeoffment; or by fine *sur grant et render* or by demise and re-demise. Since that statute, which enables the party to raise an use from the seisin of the conusee, which is executed into estate by the statute, these double fines, &c. have fallen into disuse.

And there are many purposes to be accomplished by a conveyance, or a fine, to uses, which are not to be accomplished by a feoffment, or re-enfeoffment, or a fine *sur grant et render*.—As the re-enfeoffment and the render in the fine are assurances at the common law, and the grantees are seised by the rules of that law, no powers of leasing, jointuring, &c. shifting or springing uses, can be annexed to their estates, as far as they are legal estates at the common law.

It is true, that as the conusees on the render are seised by the rules of the common law,

uses might be declared of their seisin; but this would be to do that circuitously, by two assurances, which may be done, with equal effect, by one assurance.

Besides, a conveyance to uses is attended with less expence, than a conveyance and re-conveyance. Hence the preference given, in modern practice, to conveyances to uses.

The points which have arisen on this double fine are noticed by *Mr. Cruise* in his Essay on Fines, but as this fine has fallen into disuse, the learning on the subject is become rather a matter of curiosity than of utility.

*Thirdly*, A fine *sur conuzance de droit tantum*, professes to give, or transfer, only the right or estate which is in the conusor. It asserts no positive right, and is generally used to pass a reversionary interest, or to surrender the life estate of a tenant for life.

It seems also to be a proper fine to be levied by a person, who has an estate for life, with a remote estate of inheritance, and wishes to convey both estates, so as to avoid the forfeiture of the estate for life. But as each of these objects may be attained by the fine *sur concessit* the fine *sur conuzance de droit tantum* is now very rarely levied.

Uses may be declared of a seisin transferred by this fine when it passes a seisin.

*Fourthly*, A fine *sur concessit* may be

either for years, for life, in tail, or in fee; or it may be by the general words, "All and whatsoever else the conusor hath in the premisses (s)."

This fine is in frequent use, for the purpose of passing the estates of married women who are tenants for life, or for creating *terms for years*, which are to bind contingent, or executory estates, by way of estoppel.

Fines are also distinguished as of two sorts.

1st, Fines at the common law.

2d, Fines with proclamations.

It seldom happens that a fine is levied without proclamations, but when a fine is so levied, it cannot be used either as a bar to the issue of tenant in tail, or as a bar by non-claim.

But a fine without proclamations operating merely and simply as a *conveyance*, has the same effect as a fine with proclamations.

It will also create a discontinuance when levied by a tenant in tail in possession (t), but no actual entry is necessary to avoid this fine (v).

In short, an actual entry is now necessary

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(s) *Piggott v. Earl of Salisbury*, 2 Mod. 109.

(t) *Hunt v. Bourne*, 1 Salk. 341,

(v) *Jenkins v. Prichard*, Wils. 45.

only in the single instance of a fine with proclamations.

Fines with proclamations, are fines at the common law with the addition only of proclamations made, for the sake of notoriety, in pursuance of several statutes (*w*).

Two objects are to be attained by the proclamations.

*First*, To protect a defective title from dormant claims by means of non-claim on the fine.

*Secondly*, To bar the issue in tail when the fine is levied by tenant in tail.

And the general objects to which fines are directed are:

1st, As a conveyance by married women.

2d. As a conveyance by issue in tail.

3d. To gain a title, or confirm one, by non-claim.

*First*, A married woman cannot convey her freehold, or inheritance, so as to bind herself or her heirs without some assurance of record, as a fine or common recovery: and except a recovery is to be suffered for some other purpose, as to bar an estate-tail with remainder over, &c. a fine is generally levied by the husband and wife, for the pur-

pose of aliening her freehold or inheritance. And this is the only instance in which a fine is necessary by the common law, merely and simply as a conveyance.

The fine for this purpose may be either with or without proclamations, for the proclamations are not necessary when the sole object of the fine is to pass the estate of the wife.—But for the security of the title, and to obtain the protection of the statute of non-claim, it is always advisable to have the fine proclaimed.

And the fine is equally necessary, whether the wife has an estate for life only, or an estate of inheritance.

But no fine is necessary when the wife has merely an authority not coupled with an interest, or where a power of appointment is given to a married woman, which is to be exercised notwithstanding her coverture, or which, from the nature of the power, is to be exercised during the coverture. And in *Burnaby v. Griffin* (x), the Master of the Rolls decided, that a woman who had a separate estate, by way of trust, which gave her the equitable ownership of the freehold, was competent to transfer the same without a fine.

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(x) 3 Ves. jun. 266.

*Secondly*, In consequence of the statute *de donis*, which restrained alienations by tenant in tail, and declared "*Et si finis super hujus modi tenementum in posterum levetur, ipso jure sit nullus*," tenant in tail was incapacitated from alienating intailed lands, otherwise than by means of a feigned recovery, till the statutes of 4 Hen. VII. and 32 Hen. VIII. were passed, and enabled him to alien the intailed lands by a fine with proclamations.

The statute of the 4 Hen. VII. which is the statute of non-claim on fines, enacted that, the proclamations so made as therein mentioned, the said fine should be final, and conclude as well privies as strangers, except women covert, *other than parties to the said fine*, every person then being within the age of twenty-one years, in prison or out of this realm; or not of whole mind at the time of such fine levied, not parties to such fine.

And in the 19 Hen. VIII. (*y*), the majority of the judges were of opinion, that a fine levied by tenant in tail, according to the statute Hen. VII. was a good bar to his issue; but some of the judges argued that the issue were not barred by the fine of their

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(*y*) Bro. Abr. Fine, 1. Dyer, 2, b. 4 Reeves, 334.  
Co. Litt. 121, a.

ancestor, not being privy to him, but claiming the estate immediately from the donor *per formam doni*.

To obviate the doubt entertained on the operation of the statute of 4 Hen. VII. the statute of 32 Hen. VIII. was passed.—It expressly recites that doubts had arisen respecting the validity of the statute 4 Hen. VII. in barring the issue in tail, and enacts,  
“ That all and singular fines, as well here-  
“ tofore levied as hereafter to be levied with  
“ proclamations according to the statute, by  
“ any person or persons of full age, of one  
“ and twenty years, of any manors, &c.  
“ before the time of the said fine levied, in  
“ any wise intailed to the person or persons  
“ so levying the said fine, or to any of the  
“ ancestors of the same person or persons  
“ in possession, reversion, remainder, or in  
“ use, shall be immediately after the same  
“ fine levied, ingrossed, and proclamations  
“ made, adjudged, accepted, deemed, and  
“ taken, to all intents and purposes, a suffi-  
“ cient bar and discharge for ever against  
“ the said person and persons and their heirs  
“ claiming the said lands, tenements, and  
“ hereditaments, or any parcels thereof, only  
“ by force of such intail, and against all  
“ other persons claiming the same or any  
“ parcel thereof, only to their use, or to the

“ use of any manner of heir of the bodies  
 “ of them, any ambiguity, doubt, or con-  
 “ trariety of opinion, risen or grown upon  
 “ the said statute to the contrary notwith-  
 “ standing.”

It is clear, under this act, that tenant in tail of a vested estate either in possession, remainder (*y*), or reversion, may, by a fine with proclamations, alien that estate so as to bind his issue.

So if he has merely a contingent or executory estate-tail, he may, by levying a fine with proclamations, bar his issue in tail, or, according to the nature of the assurance, bind them by estoppel.—So he may bar his issue, though the estate-tail is discontinued, or divested (*z*), or previously conveyed (*a*).

In short, the words of this statute are so strong and comprehensive, that the issue in tail can never claim a right to succeed to lands intailed, in opposition to the fine of their ancestor or parent who is within the line of the intail, even though the fine is levied, while the person levying the same has

(*y*) Shep. T. 26, 6 Jenk. Cent. 96. 3 Co. 90.

(*z*) Zouch v. Bamfield, 3 Co. 90, a.  
 Jenk. Cent. 265. Hob. 333.

(*a*) Archer's Case, 3 Co. 90, a.  
 Goodnight v. Mead, 3 Burr, 1703.



merely a hope, or chance of succession, as is the situation of the issue in tail in the life-time of his ancestor (*b*).

And even as between collaterals (*c*), the fine will be a bar, if levied by the person on whom, or on whose issue the intail, or the right to the intail, afterwards descends.

Thus if A. is tenant in tail, and has issue B. C. and D. and B. levies a fine with proclamations in the life-time of his father, this fine will, at all events, bar his own issue; and, if he or his issue shall survive the father, it will also bar C. and D. and their issue. But if B. should die without issue inheritable to his estate in the life-time of his father, his fine will not be any bar to C. or D. or their issue.—So if C. the second son should levy a fine in the life-time of his elder brother, this fine, though it would have no effect as against B. or his issue, whether his father was living or dead; yet if C. or his issue should survive A. and also B. and his issue, the fine would be a bar to D. and his issue. So that the bar of the fine, as between collaterals, depends on the fact, that the person levying the fine becomes the person on whom the intail, if existing, would have de-

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(*b*) Archer's Case, 3 Co. 90.

(*c*) Co. Litt. 372. Hob. 258.

volved (*d*). And a fine levied by one of two parents, when the intail is to both parents, will bar the intail (*e*).

But a fine levied by the issue of tenant in tail will have no effect, unless they are the issue inheritable to the intail: so that when the intail is to the male or female descendants, a fine levied by the other sex will be of no avail, as far as respects the intail (*f*).

And a fine levied by a daughter, or by an uncle, &c. (*g*), whose title, as heir, is afterwards defeated by the birth of a *nearer heir* to the intail, though such daughter, or uncle, is the issue in tail *pro tempore*, will not bar the more immediate heir, or his issue.

From these observations it will be collected, that there are several instances, in which a fine will be effectual, to bar the issue in tail, although under similar circumstances a common recovery would not bar them. For this purpose see chapter on Common Recoveries, as to owners of contingent, or executory, and future interests in tail, &c.

To these observations it may be added, that a fine levied by tenant in tail, after pos-

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(*d*) *Duncombe v. Wingfield*, Hob. 254.  
    *Mac William's Case*, Hob. 332.

(*e*) *Beaumont's Case*, 9 Co. 138,  
    *Baker v. Willis*, Cro. Car.

(*f*) *Shep. T.* 20.

(*g*) Hob. 333.

sibility of issue-extinct, is considered, as a fine levied by tenant for life, and will incur a forfeiture of his estate.

Also when there is an estate-tail, of the gift of the crown for services performed, and the reversion or remainder is in the crown, the issue in tail is protected from the bar of the fine of their ancestor (*h*).

3d. By the stat. 4 Hen. VII. it is enacted that fines shall be proclaimed in manner therein mentioned. And by the 2d section of that act, it is enacted, "that the proclamations so had or made should be final, &c. with a saving to every person and persons, and to their heirs, other than the parties to the said fine, of such right, title, and interest, as they have to or in the lands, tenements, or other hereditaments, at the time of such fine engrossed; so that they pursue their title, claim, or interest, by way of action or lawful entry within five years next after the same proclamations had and made," with a further saving "to all other persons, of such action, right, title, claim, and interest, in or to the said lands, tenements, or other hereditaments, as shall first grow, remain, or descend, or come to them after the said fine engrossed, and proclama-

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(*h*) 32 Hen. VIII. c. 36, s. 4: Co. Lit. 372.

“ tions made, by force of any gift in tail, or  
“ by any other cause or matter, had and made  
“ before the said fine levied, so that they take  
“ their action, or pursue their said right and  
“ title, according to law, within *five* years,  
“ next after such action, right, claim, title,  
“ or interest, to them accrued, descended,  
“ fallen, or come.”

And by the statute of 4 Anne, c. 16, s. 16,  
it is enacted, “ That no claim or entry to be  
“ made of or upon any lands, tenements, or  
“ hereditaments, shall be of any force or ef-  
“ fect to avoid any fine levied, or to be levied  
“ with proclamations according to the form  
“ of the statute in that case made and pro-  
“ vided, in the court of Common Pleas, or  
“ in the courts of sessions in any of the  
“ counties palatine, or in the courts of grand  
“ sessions in Wales, of any lands, tenements,  
“ or hereditaments, or shall be a sufficient  
“ entry or claim within the statute of limita-  
“ tions, unless upon such entry or claim an  
“ action shall be commenced within one year  
“ next after the making of such entry or  
“ claim, and prosecuted with effect.”

That a fine may operate to give title by  
nonclaim, it is necessary that an estate of  
freehold shall be in some or one of the  
parties to the fine, at the time of levying the  
same. Unless the freehold is in one of the

parties at the time of levying the fine, the fine, as to the purpose of barring by non-claim, seems to be actually void, or voidable by the plea that "*partes finis nihil habuerunt tempore finis levati* (i). Hence a fine levied by a person who has a term for years without first acquiring the freehold by means of a feoffment, will be merely void, or at least voidable.

So a fine levied covinously by a tenant for years, who continues the possession and pays rent, will be void, notwithstanding he has previously made a feoffment (k).

So a fine levied by a *cestui que trust*, will be void, as against all persons who have a title to the legal estate, unless the freehold is acquired before the fine is levied (l).

But it seems, as between *cestui que trusts* a title may be gained by non claim, by means of a fine with proclamations, under the like circumstances, as it might be gained at law, as between the owners of the legal estate.

The general rule is that a fine will not operate as a bar by non-claim, unless the estate to be barred, is previously divested,

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(i) 3 Wils. 249. Dyer, 215.

Fermor's Case, 3 Co. 77.

(k) Some's Case, 3 Co. 79.

(l) 27 Hen. VIII. 20. Bro. Abr. Fine, pl. 4.

or is divested by the operation of the fine (*m*). Hence the necessity of that which has been called *adverse possession*, that a fine may operate in this mode.

It is agreed, that if one pretending title to land, entereth and disseiseth, and afterwards with an intent to bind the disseisee, levieeth a fine with proclamations, this fine may operate by non-claim (*n*).

So if a man entereth under a devise which is void, he thereby gaineth the freehold by abatement, and a fine levied by him with proclamations may be used as a bar by non-claim. Or if the heir at law enters notwithstanding a devise in favor of some other person, and levies a fine with proclamations, this fine will run against the devisee (*o*).

So if a bargain and sale is made, and for want of inolment, misnomer, or the like, it is void, but the bargainee enters, and levies a fine with proclamations, as the intended bargainee gaineth a freehold by his entry, this fine may become a bar to the title of the bargainer (*p*).

The like observation is applicable to all

(*m*) *Prodger's Case*, 9 Co. 104.

*Saffyn's Case*, 5 Co. 123.

(*n*) *Ibid.* 3 Co. 79, b.

(*o*) *Hulme v. Heycock*, Cro. Car. 200.

(*p*) *Croft v. Howell*, Plow. 536.

other conveyances which import to pass the freehold, and which are void, for want of some ceremony attending them; but the intended alienee enters, by force of such defective conveyance, and levies a fine with proclamations.

So if tenant for life levieth a fine with proclamations, and such fine imports to be a grant of the fee, this fine may be used as a bar by non-claim (*q*).

So if any person enter claiming the freehold; or enters on a vacant possession claiming the freehold; or enters under a void conveyance, purporting to pass the freehold; and thus acquires a freehold, either by abatement, intrusion, or disseisin; in all these cases a fine levied by that person after his entry, will be a good foundation for the commencement of a title by non-claim. A mere instantaneous seisin will not suffice (*r*).

But a person who has a *mere naked possession*, or who dispossesses a tenant for years, and claims the term, or any other chattel interest, or who merely receives the rent of my tenant (*s*), while he continues my te-

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(*q*) *Laund v. Tucker*, Cro. Eliz. 254. 3 Co. 78, b.

(*r*) Per Lord Hardwicke, in *Townsend v. Ash*, 3 Atk. 339.

(*s*) Co. Litt. 323, 324. Plow. Com. 358.

nant (*t*), does not gain any freehold which will be a foundation for a fine. On the latter point the law is, that the possession of the tenant is the possession of him in remainder or reversion (*u*).

On this account it is frequently prudent to oust the tenant, and, in some cases, even to make a feoffment preparatory to levying a fine (*v*).

Sometimes the fine instead of operating as a bar by non-claim, will operate in confirmation of the title of those who are connected in privity of estate, with the person by whom the fine is levied; and therefore if A. is tenant for life, with remainder to B. for life, with remainder to C. in tail; and C. during the life of A. and while A. is in possession, levies a fine, and, on A.'s death, enters and continues in possession for seven years, before any entry is made by B. this fine will not operate as a bar to B. (*w*), nor is it necessary for him to make any entry to avoid it (*x*).

(*t*) *Townsend v. Ash*, 3 Atk. 336.

Smith on the dem. of *Dormer v. Parkhurst*, 3 Atk. 141.

(*u*) Co. Litt. 243, a. 321. Plow. Com. 358.

(*v*) Litt. s. 411.

(*w*) *Carhampton v. Carhampton*, 1 Irish Term Rep. 567.

Co. Lit. 298, a.

*Focus v. Salisbury*, Hard. 400.

(*x*) 11<sup>th</sup> and 7 Term Rep. 435.



The grounds of this case, which is replete with valuable learning, are

*First.* In order to render a fine with non-claim a bar to the right of a stranger, the estate of that stranger must be divested and put to a right.

*Secondly.* Though the latter part of the position is disputed, when understood in the sense of depriving the party, affected by the fine, of recovering his estate by a writ of entry, and of confining him merely to an action, yet it is agreed, that the estate or interest of the person whose title is meant to be barred, must be so far affected, that he must be deprived of the possession, either before the fine is levied, or by the operation of the fine itself, and, by the same means; a possession inconsistent with his former right must be acquired.

*Thirdly.* The parties were not, *quoad* their estates, mere strangers to each other; but they had such privity of estates as enabled them to take benefit, each from the situation and acts of the other; and it was said, that if the possession of the first tenant for life had been divested by the operation of the fine, either standing singly or connected with any acts preceding the fine, and he had within five years made an actual entry, the possession of the second tenant for life would have been as completely restored, as if he

had entered himself, and the bar arising from the non-claim would, as to B. have been as completely prevented. So also as the possession of A. was not affected, nor he put to his actual entry, to gain what he had not lost, the continuance of the possession of A. was, as to the preservation of the right of B. a continuance of the right of B. And lastly, as the circumstances at the time of levying the fine, were such as prevented him from having the capacity of affecting B.'s right of possession, a possession gained some years afterwards by C. would not give it an operation of which it was not originally capable; for the possession must be displaced as soon as the fine is completed, or not at all.

From the principle of this case, and also from 1 *Cruise*, 253, it is inferred, that if tenant in tail levies a fine, which operates merely to pass a determinable fee, and not to divest the remainder or reversion; in short, whenever the fine operates as a *conveyance*, and not by discontinuance; such fine never can be used as a bar by non-claim against those in remainder or reversion.

But if a disseisor makes a lease for life and afterwards levies a fine with proclamations to a stranger, this fine with non-claim will bar the disseisee, and consequently give

stability to the reversion of the disseisor and, as a consequence, to the estate of the lessee depending on the same title (y).

The principle of this case is the same as that of *Carhampton v. Carhampton*; it goes, however, one step further, namely, the fine, instead of barring the prior estate, connected in privity with the estate of the person who levies the fine, will operate, by way of non-claim, against those who have adverse claims, and thus strengthen the title of the person in possession, as well as the person who levies the fine.

The necessity of adverse possession is also illustrated in the case of *Goodright ex dem. Hare v. Board and Jones* (z).

In that case, the lands were demised to a tenant for twenty-one years, at a yearly rent, and for securing an annuity.—A. the reversioner demised the same lands to B. for ninety-nine years, and, in pursuance of an agreement for that purpose, the lands were redemised by B. to A. for ninety-eight years and eleven months, and afterwards A. sold the lands and conveyed them by lease and release to Jones in fee, without any notice

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(y) *Jenk. Centuries*, 254.

(z) 1 *Cruise*, 249. See also *Jones's Rep.* 457.

*Com. Dig. Feoffment*, B. 7. 3 *Term. Rep.* 162.

of the annuity; and Jones being in possession, (for so the case is stated, but query, whether he had more than the receipt of the rents, and from the judgment, it may be collected that he was merely in receipt of the rents collected) levied a fine with proclamations, and five years having passed, the question was, whether the fine operated as a bar to the title of B. and on the ground that the term of B. was not divested, or turned to a right, and that it remained after the fine, just as it did before, and on the resolution in *Margaret Prodger's case*, 9 Co. 106, a, which Lord Mansfield treated as a general rule in law, founded in good sense, without any exception; that *no fine or warranty shall bar any estate in possession, reversion, or remainder, which is not put to a right*, it was decided that the term of B. was not barred.

From one part of the judgment delivered by Lord Mansfield, he seems to have considered the case of B. as the case of a title to a rent-charge; but to apply the whole judgment to the circumstances of the case, it can be supported only on the fact, that B. could not enter on the lands, the lessee for twenty-one years being in possession; that the possession of the lessee for twenty-one years was the possession of B. as having the reversion for ninety-nine years; that at the time of the conveyance to Jones by A., A.

had no adverse possession ; that the payment of rent to Jones instead of A. did not divest the estate of B.

From the same rule, which requires an adverse possession, or, in other words, that the estate shall be displaced, or divested, there are to be deduced the following conclusions.

*First*, A rent-charge, or other collateral interest, or easement, cannot be barred by non-claim on a fine (*a*). Nor can an *interesse termini* while it remains such ; in other words, till it gives a right of entry ; nor a condition, till it operates by giving a right of entry ; nor a power, or rather an authority given to executors to sell, be barred by non-claim on a fine, since in all these instances there is no adverse possession.

In the first case, notwithstanding the fine, the lands are subject to the charge, easement, &c. and the possession is not inconsistent with the right to receive the charge, easement, &c. And in the other instances there is no estate to be divested ; but after an *interesse termini* confers a right of entry, the possession may be adverse, and non-claim on a fine will run, though the fine is levied

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(*a*) *Carhampton v. Carhampton*, 1 Irish T. Rep. 567.  
5 Rep. 124, *a* ; Shep. T. 22.

before there existed a right of possession under the term; but, even in this case, it is apprehended, a distinction must be made between a fine by the lessor and by a stranger: for a fine levied by the lessor, while the interest continues executory, will not run against the lessee: but if a stranger enters adversely, and ousts the person in possession, and levies a fine with proclamations, this fine will run against the term from the time at which the right of entry accrues. This seems to be the true ground of distinction between Saffin's case, 5 Co. 123, *b*; and *Focus v. Salisbury*, Hard. 400;—but this point, or the distinction, cannot be relied on.

In *Saffin's* case the fine was levied by the reversioner, after the right of entry under the *interesse termini* commenced; and in *Focus v. Salisbury*, the case was decided partly on the ground that the termor was, by express declaration, a trustee for the person who levied the fine.

It is observable, that in the case of an authority to sell, there is no estate till the authority is exercised; but the lands are merely subject to that authority, and there cannot be any adverse possession till the authority is exercised, and a right of entry exists under an estate given by the authority; in the mean time, the possession of the per-

son who levies the fine is perfectly consistent with the right to exercise the authority.

On the same ground, and for the same reasons, non-claim on the fine of a trustee will not bar the title of the *cestui que trust* (c), nor will non-claim on the fine of a *mortgagor* or *mortgagee* bar the right of the other of them; but if a *cestui que trust* enters, and claims to hold adversely, as against his trustee, (and to do this, he ought regularly to make a feoffment before he levies a fine), this fine, with non-claim, may become a bar to the estate of the trustee (d).

It seems also to be settled, that the fine of one *cestui que trust* may be a bar to another of them (e); and it is a general and leading rule, that whenever a trustee is barred by the operation of a fine, then, except in cases of fraud, infancy, &c. (f), the *cestui que trust* will also be barred; and *Lord Redesdale* has laid down the rule to be, whenever a person comes in by a title, opposite to the title to a trust estate, or comes in under the title to the trust estate for a valuable consideration without fraud or notice of fraud, or of

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(c) Gilb. Ch. 62.

*Focus v. Salisbury*, Hard. 400.

(d) *Basket v. Pierce*, 1 Vern. 226.

(e) *Clifford v. Ashley*, 1 Ch. Ca. 248,

(f) 2 Vern. 368,

the trust; a fine and non-claim may be set up as a bar to the claim of a trust (*g*).

There is another distinction with respect to equitable titles, where the equity charges the lands only, as is the case, as between a stranger and the *cestui que trust*, a fine and non-claim is a good bar: when it charges the person only in respect of the lands, as in the case between the trustee and the *cestui que trust*, the fine and non-claim is no bar (*h*).

In short, any right or title of entry, from whatever cause it arises, may be barred by a fine with non-claim, as a right of entry in trustees for the purpose of raising a sum of money after the birth of a child (*i*): but in that case, it is to be observed, the fine was levied after the right of entry accrued.

So a fine with proclamations may bar a remedy by action, as the right to bring error, to avoid a fine (*k*).

It is now to be considered, what persons may be barred by a fine, and non-claim thereon, and the times at which the bar will be complete.

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(*g*) Mitford's Pleadings, 203.

(*h*) 1 Ch. Ca. 278. 2 Atk. 390.

(*i*) Thomasin v. Mackworth, Carter, 75.

(*k*) Bartholomew v. Belfield, Cro. J. 332.



Generally speaking, all persons who have an absolute estate, and all corporations who have an absolute ownership, which confers an unlimited power of alienation (*l*), may be barred by non-claim on a fine. In some cases, the bar will be partial, so as to operate only against the owner for the time being, by reason of his own non-claim.

In the first place, it is apprehended, the king (*m*) cannot be barred by non-claim on a fine; nor can *ecclesiastical corporations*, aggregate or sole, be barred by non-claim on a fine, but *ecclesiastical persons*, being sole corporations, may be barred, in respect of their ownership, by their non-claim, as in the case of a bishop, parson, or vicar (*n*): and each successor will also be barred, unless he avoids the fine within five years after the title accrues: also the head of a corporation aggregate of many, may be barred by his non-claim on a fine, and by that means the remedy of the corporation may be suspended (*o*) while he continues the head of the corporation.

(*l*) Croft v. Howel, Plow. 536.

(*m*) 11 Co. 74. Co. Litt. 90. 1 Bl. Com. 247.

(*n*) Croft v. Howel, Plow. 536.

(*o*) Howel's Case, Ibid. 376.

Magdalen's Case, 11 Co. 78, b.

Howlett v. Carpenter, Vent. 311.

The same rule applies to lands annexed to offices for life, and fines levied of such lands. The officer for the time being may be barred by five years non-claim; but the non-claim of one officer will have no effect on his successor (p).

It follows that no title, depending on non-claim, can ever be good, as against an ecclesiastical corporation, aggregate or sole, if the title depends merely on a fine and non-claim; though in the case of such corporation a good title may be gained, while the particular person, being a sole corporation, continues to represent the corporation; or the head of a corporation, aggregate of many, by whom there has been five years non-claim, remains at the head of the corporation.

*Secondly.* All persons, except infants, persons of unsound mind, women under coverture, and persons in prison *at the time of the last proclamation made*, and also, except persons who have not a present right of entry, are bound to avoid the fine within five years after the last proclamations are made.

And persons who are infants, &c. are bound to avoid the fine within five years after their disabilities are removed; and per-

sons who have not a present right of entry, or claim, are bound to make entry or claim within five years, after their right of entry or claim arises; unless they labour under disabilities, and in that case, within five years after their disabilities are removed. And if several persons have severally present rights as *termor* for years, and *freeholder*, *lord*, and *copyholder* (*q*), it has been said the fine will run against each at the same time.\*

When several persons are joint-tenants, coparceners, or tenants in common, the fine may run as against those who are free from disabilities, although its operation is suspended as against such of them as labour under disabilities. This is understood to be law, though no authority in point is adduced.

In all cases, when a person claims in opposition to a fine, it becomes necessary to consider *at what time* his right of entry, &c. commenced, unless that person, at the time his right commenced, laboured under one of his disabilities mentioned in the statute; and when it shall be ascertained that any such disability existed at the time when

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(*q*) Co. Copyh. 155. 9 Co. 105. b.

Plowd. 374.

Whaley v. Tankard. 2 Lev. 52.

1 Atk. 571.

\* This distinction is now exploded.

the right of entry commenced, the next inquiry is, at what time the disability ceased.

In the case of persons having immediate rights, the fine begins to run *from the last proclamation* on the fine.

From these observations, several conclusions may be drawn, and the observations may be illustrated by their appropriate cases.

*First.* No one is bound to enter, &c. till his right of entry, &c. commences, and therefore non-claim on a fine does not run against a person, who has an *interesse termini*, till the time at which the right to enter under the term arrives.—So if there is a term, and the ownership of that term is at the time when the last proclamation is made, or the right accrues (*r*) vacant for want of letters of administration of the effects of the last owner, no right of entry exists till letters of administration are obtained.—Till that time there is no adverse possession, or any existing right; and till there is an existing right, no entry is necessary, or indeed could be made with effect.

Again, when there is an estate in remainder or reversion, after an estate of freehold, or even for years, (*r a*) the fine will not begin to run against the owner of that estate till the time arrives at

(*r*) Stanford's case, Cro. j. 61. 5 Co. 124.

(*r a*) 1 Atk. 571.

Whaley v. Tankard. 2 Lev. 52

Which this remainder, or reversion, is to give a right to the possession (*s*).

So if tenant in tail aliens, and his alienee (*t*) levies a fine with proclamations; or the issue in tail accepts rent (*u*) reserved on a conveyance made by tenant in tail; and afterwards a fine is levied by the owner who claims under that conveyance; the title and the possession will be rightful, in the first instance, during the life of the tenant in tail by whom the conveyance is made, and in the second instance, during the life of the issue by whom the rent is accepted. For this reason the operation of the fine, as a bar by non-claim, will commence in one case, on the death of the tenant in tail, and in the other case, on the death of the issue: for till that period there is no adverse title. It is observable, that when the fine is levied, there is no adverse possession. There is, however, an adverse title *quoad* the future issue, and this seems to have been allowed sufficient to call the fine into operation against them; and so far there is a qualification of the general rule, which requires the

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(*s*) Plowd. 374.

(*t*) Saffyn's Case, 5 Co. 123.

Penyston v. Lyster, Cro. Eliz. 896.

(*u*) Shep. Touch. 33, 34.

possession to be adverse when the fine is levied.

It is observable also, that when *two rights* exist in the same person, for *distinct causes*; as in the case of a person who has a remainder or reversion in fee, after an estate for life, which is forfeited by a fine levied; the entry to avoid the fine may be made either within five years after the fine is levied, on the ground of forfeiture, or within five years after the death of the tenant for life on the ground that his estate is determined (x).

So when there are in the same person distinct rights of entry, under *distinct estates*, or distinct titles (y), the owner may enter, so as to save his more remote estate, when the time arrives at which that estate is to confer a right to the possession, although he neglects to enter to save his right, under the more immediate estate. This is more particularly important, in the case of titles depending on cross remainders, since the right may, in that case, exist under some of the remainders, though it is barred as to others of them.

It is equally applicable, when the same

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(x) Whaley v. Tawered, Ventr. 241.

3 Co. 73, b.

(y) Shep. T. 34.

person has two *distinct* estates; as in tail, and fee; or *for life and in fee*.

*Secondly.* If the right devolves on an infant, or other person under disability, it is sufficient that he enters within five years after his disabilities are removed. But if there are several disabilities, existing in the same person, at one and the same time (*a*), or there are several disabilities arising at different periods, and one of them succeeds the other without any interval (as is the case of infancy and imprisonment, or infancy and marriage, and consequently coverture during infancy) the fine will not run while any one of these disabilities continues; or if there is a *succession* of disabilities in distinct persons having successive rights, as in the case of an ancestor and heir, the fine will not run against the ancestor, or the heir while the disability continues. But though the fine never began to run against the ancestor, by reason of his death, while labouring under some disability, it may notwithstanding the doubt formerly entertained on this point (*b*), begin to run against the heir, if adult, &c. at all events from the time at which his disabilities, if any, cease (*c*).

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(*a*) Flou. 375.

(*b*) Cotton's case, 2 Inst. 519. 1 Lev. 211.

(*c*) Dillon v. Leman, 2 H. Black. 584.

*Thirdly.* Whenever a fine begins to run against a person, it will continue to run against him, and in case of estates of inheritance, either in fee, or in tail, &c. against his heirs, and in case of chattel interests, &c. against his executors, &c. notwithstanding any subsequent disability ;(d) and, therefore, if the five years commence against a person who is adult, &c. they will continue to run against that person, though he becomes imprisoned, insane, &c. and though he dies either free from any disability, or under a disability, leaving for his heir, issue, or personal representative, a person who is either an infant, under coverture, insane, or imprisoned, or though he dies intestate, and *no letters of administration* are taken, the five years non-claim will continue to run.

It follows, that in investigating a title, depending upon non-claim, the first inquiry to be made, is for the time at which the right of entry, &c. commenced ; the second, whether the person then intitled to enter, had a particular estate, or an estate in fee-simple ; thirdly, whether he at that time laboured under any disability, and if he did, then, fourthly, at what time that disability ceased ;

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(d) *Doe v. Jones*, 4 T. Rep. 301.  
*Stowel v. Zouch*, Plow. 356.



and if the person died under a disability, then fifthly, whether the right devolved on a person who, at that time, was adult, &c. or laboured under some disability; and if so, then sixthly, at what time that disability ceased, and so on. And if the person against whom a fine has run, had only a particular estate, the inquiry must be extended still further. First, to ascertain whether the particular estate is determined; and if it is, then to whom the remainder, &c. belonged; and whether that person at the time when his right, under the remainder, &c. commenced, laboured under any disability of asserting his claim, and so on *mutatis mutandis*, till it can be shewn that each person who has any estate either under the first or any other more remote estate, has suffered the statute of non-claim to run against his title, and bar the same: for till this can be shewn the title will be defective.

But sometimes, by calling in the aid of a tenant in tail, or the issue in tail, so as to obtain their concurrence, as vouches in a common recovery, they, though barred by the operation of the statute of non-claim, may enable the person in possession to make a good title against those who have any right existing, under more remote estates, either in remainder or reversion.

Sometimes one of the statutes of limitation and the statute of non-claim on a fine, may, at the same time, be running against the same claimant; and if he is barred by either means, it is sufficient.

In general the fine will cause the bar, as the bar is complete in five years from the time the fine begins to run. This is always the case when the fine and the statute of limitations begin to run from the same period. But it may sometimes happen that the bar under the statute of limitations is complete, before the fine begins to run, or at least before the bar under the fine is accomplished. Thus A. is tenant in tail and free from disabilities, and the statute of limitations begins to run against him, and he then dies, leaving an infant at the age of one year, and a fine is levied with proclamations; the fine will not begin to run against the infant until he is of age, but the statute will continue to run notwithstanding the minority of the issue. So also the statute of limitations may have run for a given time, say sixteen years or upwards, so as to effect a bar before the five years, under the statute of non-claim, are complete.

No title requires a more minute investigation than a title depending on non-claim.

Whoever deduces a title, and relies on a fine and non-claim as its support, must be

prepared to shew by clear and distinct evidence, that the fine has performed its office, of bar by non-claim against all persons who might have claimed in opposition to the fine.

Whoever therefore levies a fine with an intent to gain a title by nonclaim, should endeavour by all means in his power, to ascertain the persons who are to be affected by the operation of the fine; that he may be able so shew at what time the fine has completed the title under the statute of non-claim.

These observations are applicable only as between a purchaser and seller; for as between adverse parties, the person who claims in opposition to the fine, must adduce evidence to bring himself within the exception of the statute; so as to save himself from the bar of the statute. In short, the burden of the proof lies on him. The fine is presumptively a bar after five years non-claim, till the contrary is shewn.

Before a right is asserted in opposition to a fine, it is proper to consider very attentively whether the claimant has a right of entry, or merely a right of action, to avoid the fine.

In all cases it is apprehended (except two, namely, first, a discontinuance by the alienation of tenant in tail either by force of the alienation or by reason of a warranty, or, secondly,

a descent which tolls entry) the claimant may enter; but in the case of a discontinuance, or a descent which tolls entry, he cannot enter, but is driven to his real action. And as the claimant is now bound (e) to prosecute his entry or his claim, within one year after his entry or claim is made, (unless he can make a new entry or claim within five years, for this is the construction of the statute) he may by mistaking his remedy, as by making an entry and bringing an ejectment, instead of bringing his real action, lose his right: for if he should enter towards the end of the five years, and be non-suited in his ejectment, on the ground that he had merely a right of action, and, not a right of entry; and the five years should elapse before the non-suit, he might, unless he shall take the precautions which are recommended, be deprived of all remedy, since his claim made and action brought, after the five years are expired, will be too late.

In all doubtful cases therefore the party should prefer a real action to an ejectment; or if he brings an ejectment as the more easy remedy, he should also make his claim, and within the year prosecute his real action.

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(e) 4 Anne, c. 16, § 16.

No fine with proclamations can be avoided without an actual entry and this is the only case in which an actual entry (*f*) is now requisite. But that an entry may be effectual to avoid a fine, it must be made for that *express and declared purpose*. (*g*)

And if an entry made by the person entitled to a particular estate is effectually made and prosecuted with success, so as to avoid the fine as against himself; his entry, (with the exception of an entry by tenant for years, when those in remainder or reversion have only a *right of action*,) (*h*) will restore the seisin of all persons in remainder or reversion, expectant on his estate; and as a consequence no bar by non-claim can ever be set up under the same fine; but the persons in remainder or reversion may, when their estates become estates in possession, enter as if no fine had been levied. (*i*)

In regard to actions to avoid a fine, it is sufficient that the action is commenced within the five years, although judgment is not obtained till a subsequent period; but the action must be prosecuted with effect, or a new action brought within the five years:

(*f*) *Berrington v. Parkhurst*, 2 Str. 1086. *Clerke v. Pywell et al*, 1 Saund. 319.

(*g*) S. C. 1 Mod. 10.

(*h*) Litt. § 411, Co. Litt. 304; Hawk. Co. Litt. 337.

(*i*) Will. Ed. of Saund. note to 1 vol. 319.

for if an action is brought and discontinued, and the five years elapse before another action is brought, the non-claim will be a bar. But an entry or action is necessary only when a title is legal.

In cases of fines levied of trust estates, the fine, as against the *cestui que trust*, must be avoided by a bill in equity; at least, unless the legal effect of the fine is avoided by the entry or action of the trustee; and if the trust affects the *land* and not the *person*, the proper remedy is an entry or action by or in the name of the trustee. But on this point query, and see 1 Cruise, 303.

So the fine itself may be avoided for error in the fine, and if the fine is avoided, the proclamations, and consequently the operation of the fine as a bar by non-claim, are also avoided. (k)

So if there is any irregularity in the proclamations, though the fine remains in force, (l) it cannot have any effect under the statute of non-claim; and in the case of a fine levied in Westminster-hall, of lands in ancient demesne the fine may be avoided by writ of disceit.

But on the rule propounded by Lord Ba-

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(k) 1 Dyer, 216, a.

(l) Ibid.

con, "*non potest adduci exceptio ejusdem rei*" "*cujus petitur dissolutio*," no non-claim will run against the lord upon this particular fine; (m) but if a second fine is levied of these lands in the court at Westminster, the proclamations on this fine and non-claim for five years, will bar the lord of his remedy by a writ of *disceit*. (n)

A fine to be avoided by a writ of error is merely voidable; but a fine levied in a court which has no jurisdiction (as in the case of a fine levied in the court of Westminster of lands within a peculiar jurisdiction, as the county Palatine, &c.) is actually void; and a fine which is actually void (o) can never be a bar by non-claim, nor is an entry or claim necessary on account of the fine.

It remains only to be observed, that care should be taken to see that the proclamations appear regular on the record, and pursuant to the statute; and as the proclamations can be made only under the statute, a fine levied in some courts, as courts of *ancient demesne*, &c. cannot be proclaimed, and, as a

(m) *Cockman v. Farrer*, 7 Lord Raym. 461. *Zouch v. Thompson*, 1 Lord Raym. 177.

(n) *Wright's case*, Owen 21. Plowd. 370, b; 2 Inst. 518.

(o) 2 Inst. 557; 4 Inst. 206.

consequence, they cannot operate either by non-claim, or as a bar to the issue in tail. (p)

In the observations already offered on fines, a summary view has been taken of this important learning. The student is recommended to pursue the subject in those books which are written professedly on this assurance.

With a view to the immediate business of the practical conveyancer, the following points will be considered :

1.—By whom } a fine may be levied.  
2.—To whom }

3.—In what court.

4.—On what writs.

5.—Of what parcels.

6.—By what name.

7.—The parts of a fine.

8.—At what time a fine is complete,

*First*, As a conveyance.

*Secondly*, As operating under the statute of proclamations, either as a bar to issue in tail, or by non-claim.

9.—The difference between a fine, as

*First*, A conveyance.



*Secondly, An estoppel.*

*Thirdly, A bar to issue in tail.*

*Fourthly, A bar under the statutes of non-claim.*

10.—On what fines uses may be declared.

11.—By whom the uses of a fine may be declared.

12.—Of resulting uses.

13.—Of deeds leading, and

14.—Of deeds declaring the uses of a fine.

*First,* With the exception of the king, and corporations aggregate of many, a fine may be levied by all persons either alone or jointly with others; even infants, idiots, and married women, may levy fines. But infants or idiots ought not to be permitted to levy a fine (with the exception of an infant who is a trustee within the provisions of the 7 Anne, c. 19.) (q) but, having levied a fine, it will be good, (r) except that an infant may, during his minority, reverse a fine levied by him while an infant. (s) The trial of infancy must be by *inspection* of the judges of the court in which the fine is levied; but

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(q) *Ex parte Mair*, 3 Atk. 479.

(r) *Cavendish v. Worsley Lumter et al.*, cited, 12 Rep. 122.

(s) 17 Ass. 17, 2 Roll Abt. 15; *André Hargate's* case. 12 Co. 122.

the court will receive evidence, by examination of witnesses, as the godfather and godmother; (t) church books, &c. (v) to assist their judgment; and if the inspection takes place during the minority, the reversal founded on that inspection may be subsequent to the period of majority; (y) and either by the party himself or his heir; and by the heir, notwithstanding the conusor dies during minority; and to secure to the infant the benefit of his non-age, the inspection may be recorded before the fine is engrossed.

In case an infant becomes adult, or dies before inspection, the heir is without remedy. (z)

The fine of idiots is also binding on them and their heirs, and there are not any legal means of avoiding this fine; and although the conusor in the fine is found to have been an idiot, *a nativitate*; (a) the fine will be deemed good at law: and it is immaterial, whether the fine is obtained from an idiot, or from a person under a temporary deprivation of intellect; for the law is the same with regard to those who have lost their

(t) Bro. Ab. Error, pl. 60.

(v) 2 R. Abr. Anne Hungate's case, 12 Co. 122.

(y) Co. Litt. 131. Kekewich's case.

(z) 2 R. A. 15, 12 Co. 122.

(a) Mansfield's case, 12 Co. 123.

understanding, as to natural idiots who never had any. (b)

In some cases (c) equity has relieved by decreeing a *re-conveyance*. In another case it relieved against a fine levied upon a possession obtained under a *forged* deed. (d) And Lord *Hardwicke* observed, though a fine has been levied, yet if it has been under circumstances of fraud, the court ought to prevent the stealing away an estate in this manner. (e)

Persons who are born deaf, dumb, and blind, (f) are in the same predicament with idiots. Persons deprived of only one or two senses, and who could express their meaning by writing, or signs, have been allowed to be competent to levy fines. (g)

Nor can *duress of imprisonment*, or the like, be alleged at law as an answer to the operation of a fine. (h)

The rule of court, (i) which requires an affidavit of one of the commissioners, before whom a fine is acknowledged, that the

(b) 4 Rep. 124.

(c) 2 Vern. 678.

(d) *Cartwright v. Pultney*, 2 Atk. 381.

(e) *Baker v. Pritchard*, alias *Hosier*, 2 Atk. 387.

(f) Co. Litt. 42, b.

(g) *Elliott's case*, Carter. 53.

(h) *Chetwynd on fines*, 49.

(i) 17 Geo. II.

parties are of age, and competent understanding, has given great protection against the frauds formerly practised, in obtaining fines from minors, &c.

A fine by a *married woman* alone, without the concurrence of her husband, ought not to be received, except, perhaps, under the particular circumstance of her husband being banished for *life*; or under very peculiar circumstances, as in *Moreau's case*, (*k*) where the husband had sold, and he covenanted that he and his wife, when of age, should levy a fine. She attained her age of 21; and at first refused to levy the fine. Her husband afterwards went abroad, and then she consented to levy the fine; and her acknowledgment, as a *feme sole*, was received by the chief justice of the Common Pleas. This fine was levied without prejudice to the husband's right to avoid the same. In short, the court could not by any means preclude his right to question the validity of the fine. All the chief justice did, was to enable the wife to bind herself, by receiving the fine from her, as if she had been a *feme sole*.

But though a married woman ought not to be allowed to levy a fine, unless her hus-

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(*k*) 2 Blackst. Rep. 1208.

band joins as a party; yet if she levies a fine as if she was a *feme sole*, in other words, without disclosing by the record, that she is under coverture, this fine will be good against her and her heirs, (l) unless it shall be avoided by her husband. He may avoid it during coverture; and when avoided by him during coverture, the fine will be also avoided against the wife and her heirs (m) and it is said, a husband entitled to be tenant by the curtesy may *pro interesse suo*, avoid a fine, even after the death of his wife.

And when it appears by the record, that a fine is levied by a married woman, for example, by *A. the wife of B.* without the concurrence of her husband, this fine will be voidable for error apparent on the record; and it may be avoided accordingly, even by the wife or her heirs. Under these circumstances her fine is said to be merely voidable. (n) And if a fine *executory* shall be levied by a woman as a *feme sole*, and execution is sued against husband and wife, and she is received for his default, she may defeat the fine, by shewing her coverture.

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(l) Co. Litt. 46, a; 2 Roll. Ab. 20. Perk. § 20; Shep. T. 7.

(m) Co. Litt. 46, a.

(n) Siderf. 122.

It is said, this is for the benefit of her husband. (o)

Marriage by a woman after she has acknowledged a fine, will not avoid the fine. The fine may be made out in her name as a *feme sole*. (p)

And a fine levied by a husband and wife will remain in force, notwithstanding the marriage between them is dissolved by a divorce. (q)

It is observable, that as fines are binding on idiots, &c. and also on infants, unless avoided during minority; and by married women, unless avoided during coverture; deeds executed by them declaring the uses of these fines are also good. So long as the fine, which is the principal, remains in force, the deed of uses, which is only the accessory, will continue to be effectual. (r)

Particular persons by whom fines may be levied, and whom it will be proper to notice, are

The *queen*, (s) whether sole or consort.

*Sole corporations*, (t) and though *ecclesiastical*

(o) Co. Reading, 9; Co. Litt. 353.

(p) Shep. T. 18.

(q) 2 Ro. Abr. 20.

(r) Mansfield's case, 12 Co. 123. 2 Co. 58. 10 Co. 42, b.

(s) Co. Litt. 3; Densh on fines, 12.

(t) Co. Read. 7.

persons (v) are restrained from alienation, their fines are good against themselves, (x) and voidable only, (y) and not void as against their successors. (z)

*Persons attainted* of treason or felony, (a) may levy fines to bind themselves and their heirs, not the king or lord. So a fine by an *alien* will be good as against all persons, except the king; and against him till office found. (b) So persons outlawed in personal actions may levy fines.

Particular persons by whom fines cannot be levied, are,

*First*, The *king*; (c) because no writ of covenant can be brought against him; but when he is conusee in a fine, he may render the lands, and thus indirectly levy a fine. But by statute law he is restrained from alienation, otherwise than for a limited period, and in particular cases.

*Secondly*, Corporations aggregate of many; (d) but according to 1 Leon. 134, cor-

(v) 13 Eliz. c. 91, § 5. 13 Eliz. c. 10.

(x) *Howlett v. Carpenter*, 3 Keb. 775.

(y) *M. Plowd.* 538.

(z) *Magdalen's case*, 11 Rep. 78, b.

(a) *Shep. T.* 7; 8 Assize, pl. 25. *West. Symb.* § 13.

(b) *Densh Reads. on Fines*, 13; *Co. Read.* § 17.

(c) 7 Rep. 32. *Cro. Car.* 96, 97.

(d) *Co. Read.* 7.

porations of this description may levy a fine by attorney.

This is contrary to Lord *Coke's* opinion in his Readings. He observes, that the *statute de modo levandi fines* requires that the parties to a fine shall appear personally before the judges. These observations apply to the persons, &c. by whom fines may be levied, in respect of personal or political qualifications. It is also to be considered, by whom a fine may, or may not, be levied, in *point of estate*, and to what extent, in respect of share.

*First*, That a fine may be free from the objection that *partes finis nihil habuerunt* there must be an estate of freehold in one of the parties: (e) whether it is in the conusor or conusee is of no material consequence, and whether this estate is of inheritance, or merely of freehold; (f) and, when of freehold, whether it is of a superior or inferior degree; and whether it is by right or wrong; and notwithstanding it is under a defeasible title; (g) and whether the estate of freehold is in possession, or in reversion, or remain-

(e) 3 Wils. 249; Dyer, 215; 2 Inst. 523; 5 Co. 123.

(f) *Focus v. Salisbury*, Hard. 401; *Davies' case*, Dyer, 3, b. in a note.

(g) *Carter v. Barnardiston*, 1 P. W. 105.



der, (h) is of no consequence. (i) Indeed, a fine by a remainder man, or reversioner, though it cannot bar the tenant of the prior estate, while he continues in the seisin, may bar strangers, and enure for the benefit of the tenants of the prior estate..

As between the parties, and also privies, such as heirs and issue in tail, (k) a fine will be good, although the freehold is not in either of the parties. (l) But as against strangers, in other words, the rightful owners, and as a bar by non-claim, the fine may be avoided by this plea.

This is considered as a disability from want of *sufficient estate*. It is rather a disability to levy a fine for a particular purpose, than a positive and absolute incapacity. A fine levied, under the circumstances that the freehold is not in either of the parties, has, in truth, no operation on the freehold. It cannot amount to a conveyance, because there is not any estate in the parties to be conveyed. If levied by a mere stranger, it cannot pass any estate, though it may operate by conclusion as an estoppel; and if levied by

(h) Jenk. Cent. 254.

(i) Ibid.

(k) Grant's case, 10 Co. 50; Johnson v. Bellamy, 2 Leo. 36.

(l) Jenk. Cent. 274.

tenant for years, or by a copyholder, it is a forfeiture of his interest.

The persons then disqualified, in point of estate, from levying a fine, are,

*First*, Persons having chattel interests, (m) as termors for years.

Tenants for uncertain interests, as till debts are paid.

Tenants by statute merchant.

\_\_\_\_\_ staple.

\_\_\_\_\_ elegit.

Tenants at will.

*Secondly*, Copyholders. (n)

The fines of all these presents are good as against themselves, by way of estoppel. But they have no operation to carve out a title by non-claim grounded on the fine. They do not operate even as a conveyance of their respective estates, but as an extinguishment of them. That a termor, or a copyholder, may, by means of a fine, acquire the fee by non-claim, a feoffment should be made to gain the freehold, and the fine be levied at a subsequent period. (o) When preceded by a feoffment, the fine will be free from the objection that *partes finis nihil*

(m) 3 Co. 77.

(n) Co. Copyh. § 55.

(o) Co. Copyh. § 55; *Margaret Podger's case*, 9 Rep. 104.

*Focus v. Salisbury*, Hardr. 401

*habuerunt*; for the estate of freehold is acquired by the forcible operation of the livery.

When a person has merely *a right of action*, (p) or a title of entry, or a contingent interest, (q) he is not in a situation to levy a fine, so as to make a *conveyance*. His fine, if levied to a stranger, will be void as a conveyance, since *partes nihil habuerunt*; if levied to the person in possession, it will operate as a release of right; and if levied to a stranger, the person in possession may take advantage of it as an estoppel against the conusor, and by that means it will amount to a virtual release, or rather conclusion of his title. (r) For this reason, a person having such right or title should take care, by entry or action, to restore his seisin before he levies a fine, except in those instances in which it is his intention to extinguish such his right or title. Persons having contingent interests should also cautiously refrain from levying a fine, unless they mean to extinguish these interests. They may levy

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(p) Buckler's case, 2 Co. 55. Ward v. Mathew, alias Walthew, Noy. 123; Cro. J. 175.

(q) Grant's case, 10 Co. 50. 3 Lev. 227; 3 Co. 90, a, 10 Co. 50, a

(r) Buckler's case, 2 Co. 55. Palm. 365; Weale v. Lower, Pollexfen, 55.

finer which give a particular interest as for years. When such is the intention, a fine for years will attain the end, and such fine, though it will bind the interest when vested, will not conclude the title. (s) So *cestui que trusts* have no freehold at law : they have a freehold in equity. A fine by a *cestui que trust* (t) will, as against the heirs and issue in tail, have the same operation in equity as the fine would have had on their estates, if they had been legal, and the *cestui que trust* had had the legal estate, with the exception only that a fine by a *cestui que trust* will not, it is apprehended, operate as a discontinuance against persons in reversion or remainder, so as to render their interests unalienable. The doctrine of discontinuance is understood to be confined to legal estates, and to be a consequence of the rules of tenure. At law, the fine of a *cestui que trust*, as such, will not have any operation. To lay a proper foundation for any legal operation of a fine by a *cestui que trust*, he ought to make a feoffment that his fine may not be exposed, as it (v) otherwise will be, to the objection that *partes finis nihil*,

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(s) *Weale v. Lower*, Pollexf. 55.

(t) *Clifford v. Ashley*, 1 Ch. Ca. 268 ; *Salisbury v. Bagot*, 3 Ch. Ca. 278 ; *Mitford Pleadings*, 201.

(v) *Essay on Estates*, p. 51.

&c. Many fines, levied with a view to gain a legal title by nonclaim, are open to this answer, and are not to be relied on. This observation has equal application to fines by persons entitled to the *equity of redemption* of lands mortgaged in fee, if they are to be used as a bar to strangers, having legal interests. It is (w) well understood that a fine by a mortgagor or mortgagee will not bind the other party.

It is allowed in equity that a fine by one equitable owner, with non-claim, may be pleaded as a bar in equity to the right of another equitable owner.

It is observed by Mr. Cruise (x) that a fine levied *before entry or receipt of rent*, will be void on the same principle,—viz. want of freehold.

This observation must be understood with the qualification that the freehold is in some other person. A fine by a person who has a seisin, in point of fact, as by actual possession; or in law, as an heir on the death of his ancestor, and before any abatement by a stranger (y); or by construction of law, as a person who is entitled to the reversion or remainder expectant on an estate in the

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(w) 1 Vent. 82. *Weldon v. Duke of York*, 1 Vern. 132.

(x) On Fines, 106.

(y) *Hempsley v. Brice*, Cro. Eliz. 641.

possession of his tenant, may levy a fine with effect. In all these instances the freehold is in him, and the plea of *partes finis nihil*, &c. will be irrelevant. In *Lord Townsend v. Ash*, (z) the persons who insisted on the efficacy of the fine, were persons who had a *defeasible* title, under an estate gained by adverse possession. They had levied a fine, but having levied the fine before they had any seisin, in fact, or in law, the fine did not avail them.

And a fine levied under a possession obtained by fraud, though good at law, has not been allowed to prevail in a court of equity. (a)

*Tenants in common, coparceners, and joint-tenants* have an ownership only in their aliquot parts, and the operation of a fine *by them*, will be confined to their respective shares. Though joint-tenants are seised *per my et per tout*, a fine levied by a joint-tenant of the intirety, will be good only for a moiety. It will sever the joint-tenancy. (b)

These observations apply to the tenants of this description only while the joint-tenancy, &c. continues. When one joint-tenant, tenant in common, or coparceners disseises his companion, and by that means

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(z) 3 Atk. 336.

(a) *Cartwright v. Pulteney*, 2 Atk. 381.

(b) 1 Cruise, 104. 6 Mod. 45.

acquires a sole seisin (c), the fine will operate to the extent of the share acquired by disseisin, as well as the original share; whether there has been a disseisin is, frequently, a question of fact, and is to be collected from circumstances.

Lord Mansfield's observations in *Doe v. Prosser* (d), already cited on this point, are deserving of particular attention. So are those of Lord Kenyon, in *Peaceable v. Read* and others, 1 East, 568.

*Secondly.*—To whom a fine may be levied.

All persons who may be grantees in a deed may be conusees in a fine.

The king may be a conusee. (Densh. 12.)

So may an *infant*, a *married* woman, &c. and when a married woman is merely a conusee or even a grantor of the land, on the render in a fine, it is not necessary that she should be solely examined apart from her husband, for she cannot be prejudiced. But when there is a fine to a married woman, and the render is a *rent*, she ought to be solely examined, since the render may be a prejudice to her.

When a wife is merely a *grantee* in a fine, the fine may be levied to her alone; but

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(c) *Fairclaim v. Shackleton*, 5 Burr. 2604.

*Doe v. Prosser*, Cowp. 217. 1 Inst. 243, b. 373, b. 374, a.

*Ford v. Lord Grey*, 6 Mod. 44.

(d) Cowp. 217.

her husband during the coverture, and on his death, she may avoid the fine by disagreeing to it. So may her heir after her death without having agreed to the fine. But if the wife is to render the lands, it is apprehended her husband ought to be a grantor jointly with her in the render.

So a person *attainted* may be a conu-see. (e)

So may a *corporation* sole or aggregate. (f)  
*Thirdly*, In what courts.

The fine must be levied in a court *having jurisdiction* over the lands.

A fine levied in the court of Common Pleas at Westminster, of lands in a county palatine, is *coram non judice*, and void. (g)

So of lands in *Wales*, &c. On the other hand, a fine levied in the court of Common Pleas of lands in *ancient demesne*, is not void. But the lord has a right to reverse the fine by a writ of disceit, to restore the lands to his jurisdiction. It is said that the lands are not within the jurisdiction of the superior courts: (h) that position is at least questionable. If the lands are not within the jurisdiction, how can the fine remain in

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(e) West Symb. 815.

(f) Den. Read. 12.

(g) 2 Inst. 557.

(h) 1 Cruise, 97.



force between the parties? How can it change the tenure, even for a time, into frank-fee? And how can a second fine operate even as a bar by nonclaim against the lord?

So a fine levied of *copyhold lands*, in the court of Common Pleas, is not open to the objection of being *coram non judice*. That court has jurisdiction over the lands, though the copyholder ought to be impleaded in the lord's court. This is said, in application to those instances in which the court of Common Pleas has jurisdiction over the lands, as far as they are of freehold tenure; so that the lord may implead or be impleaded in that court.

The courts in England have no jurisdiction over lands in Ireland. (i) So the courts in this country have no jurisdiction over lands in the West Indies. Sometimes, however, a fine of lands in the West Indies is levied in the courts of Westminster-hall: this is done merely because the courts in the plantations respect such fine, as a species of solemn conveyance.

Admitting the court to have jurisdiction over the lands, a fine may be levied in,

1. The court of Common Pleas.

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(i) Densh. Read. 3.

2. The court of King's Bench ; at least when a suit is depending in that court on a *writ of error* from the court of Common Pleas ; (k) and a fine levied in the court of King's Bench on a writ returnable in that court is voidable only, and not void. (l)

3. Courts of Great Sessions in Wales. See 34 and 35 Hen. VIII. c. 26. s. 40.

4. Counties palatine, viz.

Lancaster ; see stat. 37 Hen. VIII. c. 19.

Chester ; see stat. 2 and 3 Ed. VI. c. 28, 43 Eliz. c. 15.

Durham ; stat. 5 Eliz. c. 27.

Court of ancient demesne.

Inferior courts by usage, confirmed by act of parliament, as in some cities, boroughs, &c. (m)

*Fourthly*, On what writs.

A fine may be levied on every writ by which lands may be *demand*ed, *charg*ed, or *bound* ; or which in any sort *concern* lands, as a writ of

Mesne, (n)

Warrantia chartæ, (o)

De consuetudinibus et servitiis, (p)

(k) 1 Cruise, Densh. Read. 3.

(l) Co. Read. 9. 9 Vin. Abr. Fine, 217.

(m) Co. Read. 9.

(n) Ib. 10.

(o) 2 R. Abr. 14.

(p) Ibid.

Quod permittat, (*q*)  
 Quid juris clamat, (*r*)  
 Right of advowson, (*s*)  
 Quare impedit, (*t*)  
 Assize, (*u*)  
 Præcipe quod reddat, (*v*)  
 Right, close or patent, (*w*)  
 Dower, (*x*)  
 Covenant, (*y*)  
 Annuity. (*z*)

In modern practice the writ of covenant is in general, and almost invariably, made the ground work of the fine.

*Fifthly.* Of what parcels.

A fine may be levied of all things of which a *præcipe quod reddat* will lie; viz. 1, Land in all its varieties. 2, Of other things, as

Advowson.

Right of presentation.

Rent-charge.

Chief rent.

Office.

(*q*) Co. Read. 10.

(*r*) 2 R. Abr. 15.

(*s*) Ibid. 14.

(*t*) Ibid.

(*u*) Ibid.

(*v*) Ibid.

(*w*) Hunt v. Bourn, 1 Salk. 340. 2 R. Abr. 14.

(*x*) 2 R. Abr. 14.

(*y*) Co. Read. 10. 2 R. Abr. 14.

(*z*) 2 R. Abr. 14.

Things *in prendre*, if to be ascertained with sufficient certainty.

And of lands, whether they are held in possession, or in remainder or reversion.

Tithes.

New River shares.

Undivided part.

But a fine cannot, it is said, be levied of Common in gross *sans nombre*. (a)

Annuity. (b)

But a judgment on a writ of annuity will, it is apprehended, bind the interest of the parties, and even of a married woman, in an annuity. And there are many instances of fines levied of annuities ; and some of them on a writ of covenant. (c)

Office of dignity.

*Sixthly*. By what names.

In fines, as in adverse actions, the parcels ought to be demanded by their legal names.

The description, then, should be of a given number of messuages, &c. acres, &c. and not by the name of a *farm*, *tenement*, &c. as in *deeds*.

But as to the quantities, &c. (d) great

(a) 1 Cruise, 121.

(b) Shep. P. Couns. 1.

(c) 2 R. Abr. 15.

(d) Massey v. Rice et al. Cowp. 346,

latitude is now given by the courts, since fines are considered as common assurances. The deed leading or declaring the uses of the fine is considered as part of the assurance, and the intention of the parties respecting the parcels, will be collected from the deed. (e)

It seems almost to be a general rule that in fines and common recoveries, the lands, &c. will pass by any denomination the parties shall give them, so as the intention to comprise them is clear.

And the certainty of the lands may be made out by *averment*, and of course proved by parol evidence, or from the deed of uses. As where a person who has two manors of the same name, levies a fine of a manor of that name, without any circumstance of distinction. (f) But unless there are circumstances, as evidence, to shew in certainty which manor was to pass, the fine will be void for uncertainty.

The deed (g) by which the uses of a fine are declared is the measure by which juries usually go, in ascertaining the description of the estates whereof a fine is levied; and

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(e) *Travelly v. Eadon*, Cro. Car. 269.

*Eyton v. Eyton*, 1 Bro. P. C. 151.

(f) *Gilb. Evid.* 38. 2 R. A. 676. c. 23.

(g) 1 Bro. P. C. 136.

courts of justice constantly allow the fine to be amended, as to the parcels, by the deed of uses ; and in particular they will not suffer a fine to pass more lands than were intended to be included ; although the parties may have a greater quantity of lands than are enumerated in the parcels of the fine.

It is said also that a fine will not pass a greater number of acres than are contained in the writ and concord, although the deed of uses mentions more. (*h*)

There are cases, however, to the contrary.

In Vin. Abr. Evidence, (*i*) there is this passage :

“ On a trial in the north, whether lands were comprised in a recovery or not, being, as described, but 28 acres : yet the fact was they were 120 acres. Yet *bene* : because the intent of the party is what is to govern in these cases, and these 28 acres shall not go according to the statute, but the estimation of the parties. *Per* King, Ch. Tr. Vac. 1727.”

And in *Eyton v. Eyton*, (*k*) it was argued

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(*h*) Jenk. Cent. 254.

(*i*) P. 240.

(*k*) 1 Bro. P. Ca. 151.

on the part of the defendant, and the argument seems to have prevailed, that the deed of uses, and not the fine and recovery, was the measure which the jury went by.

At all events, the rule is to amend the recovery by the deed of uses, when the lands are described by name, in the deed of uses; or it was evidently the intention of the parties to include them. An affidavit is now required of the *intention* to include the parcels, which are omitted out of the fine, &c. (l) unless there is a manifest intention disclosed by the deed to include the parcels in question. Under such circumstances, of intention, it should seem the affidavit will be dispensed with, when by reason of the death of the parties it cannot be made. (m) At least an affidavit of the belief of an intention to comprise the parcels, will be deemed sufficient.

In all cases of amendment, it is an essential circumstance that the lands shall be included either under a special denomination, or by general words in the deed of uses.

*Seventhly.* The parts of a fine.

The parts of a fine are,

(l) *Wheeler v. Heseltine*, 2 Bos. and Pull. 580.

*Dowse v. Regre*, 1b. 579.

(m) *Milbanke v. Jolliffe*, Notes to. 2 Bos., and Pull. 580.

*Loggia v. Fuller*. Barnes, 21.

*Pearson v. Broughman*. 1 H. Black. 73.

- 1st. The original writ.
- 2d. Licentia Concordandi.
- 3d. The concord ; to which are added
- 4th. The note of the fine.
- 5th. The foot of the fine.

The three first are the material and essential parts.

*First.* The original writ is essential to the validity of a fine. Unless there is an original writ, there is no basis or ground work, for the fine. (*n*) A fine without an original writ will be voidable (*o*) and not void (*p*) for error. And, no parcels can be introduced into the fine, besides those in the writ. Unless there is a writ there cannot be either a plaintiff or defendant, in other words, a conusor or conusec.

The circumstances which must concur in the writ are—there must be

- 1st. A plaintiff or demandant.
- 2d. A tenant or deforçant.
- 3d. The parcels with the proper return, &c. Teste, &c. so as to appoint a time for the appearance of the parties in court and to give authenticity to the writ. The writ must have remained in force till its return ;

(*n*) West Symb. s. 23. Co. Read. 3.

(*o*) 18 Ed. I. stat. 4. 2 Inst. 513.

(*p*) Count Lestrangle's case, 2 R. Abr. 14.



and it must be returnable on a law day, and not on a *dies non juridicus*, as *Sunday*, &c.

A *retraxit* (q) puts an end to the legal virtue of the writ; and at the common law, the force of the writ would have been determined by the death of the king (r), before the return. Now by the statute of 1 *Anne*, c. 8, s. 5, no original writ, &c. shall abate by the death of the king or queen.

Still, however, the death of either of the parties *before the return of the writ* (s), will determine the authority conferred by the writ. Of course, a fine levied on the foundation of a writ, when one of two parties dies before the return of the writ, will render the proceedings erroneous, and liable to be avoided for error. But if there are several plaintiffs or several defendants, and one of the plaintiffs or defendants dies before the return of the writ, the fine will be erroneous as against that person only who shall die. The fine is generally acknowledged before the writ of covenant is sued out; and this writ may, as to the courts of Westminster Hall, be sued out in vacation, returnable of a preceding term, so that the fine though

(q) Bro. Judgm. pl. 114.

(r) Bro. Abr. Fine, 85.

(s) *Clements v. Langham*, 2 Lord Raym. 872.

*Wright v. Mayor of Wickham*, Cro. Eliz. 418.

acknowledged in the vacation, may be good, notwithstanding the death of one of the parties before the term, provided the writ of covenant is made returnable, as of the preceding term.

In *Wales* and the counties palatine, it is a great inconvenience, that all fines acknowledged in the vacation, are levied as of the next great sessions, &c. when the writ of covenant is made returnable; so that no purchase can be safely completed during the vacation.

*Secondly.* Of the *Licentia Concordandi*.

The *licentia concordandi* is the licence given by the crown for the accommodation of the suit. On this writ a fine called the *premier fine*, and on the licence to accommodate, a fine called the *post-fine*, or in modern times the *king's silver*, is due.

Both these fines are now assessed at the same time, at the Alienation office. The time of payment, and mode of entering, is regulated by the statute of 32 *Geo. II.* c. 14; and by this statute, s. 2, it is enacted that "no fine, until the same be marked with the sum to which the post fine amounts in the King's Silver Office shall be effectual in law." And the officer of the King's Silver Office or his deputy is now restrained from receiving any writ of covenant, unless it appears by the mark and indorsement of

such receiver, that the post fine has been paid.

The licence to accord, or king's silver, is entered to this effect.

Robert Drury, Esquire, gives to our lord the king, seven pounds for licence to *accord* with Thomas Tey, Esquire, and Elizabeth his wife, of a plea of covenant of the manors of, &c. Such entry ought to contain the following particulars.

1st. The sum given for licence to compound.

2d. The party who pays it; and this should be the person in whom the fee is to be vested.

3d. The plea, and between whom.

4th. The lands for which the fine is paid. (f)

Any error in the entry of the king's silver as to the parcels, is amendable. (u)

*Thirdly.* The concord, which is the formal part of the contract between the parties, and of the essence of the fine.

The concord is the substance of the fine: it contains the acknowledgment; it is to be made *in person*, either in court, or before commissioners under the authority of a writ of *dedimus potestatem*, or before the chief jus-

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(f) Tey's case, 5 Rep. 39, a.

(u) Bohun's case, 5 Rep. 43.

1 Cruise, 132.

tice of the court of Common Pleas, who, by virtue of his office, and without any writ of *dedimus*, may take the acknowledgment of a fine ; or before justices of assize ; but in case of an acknowledgment taken by justices of assize, it is the practice to sue out a writ of *dedimus potestatem* to them after the acknowledgment is taken ; but this, though such is the practice, is not absolutely necessary.

The concord in a fine *sur conuzance de droit come ceo*, is to this effect.

*And the agreement* is such, to wit, that the aforesaid A. hath acknowledged the aforesaid messuage with the appurtenances, to be the right of the said C. as that which the said C. hath of the gift of the aforesaid A. *And* the same messuage with the appurtenances, the said A. hath remised and quit-claimed from him the said A. and his heirs to the aforesaid C. and his heirs for ever. *And moreover* the said A. hath granted for himself and his heirs that he will warrant to the aforesaid C. and his heirs, the aforesaid messuage with the appurtenances, against him the said A. and his heirs for ever. And for this, &c.

Taken and acknowledged the  
day of

in the            year of the  
reign of King George the  
Third, before

## ANOTHER FORM.

*And the agreement* is such, that is to say, that the said A. and C. have acknowledged the tenements aforesaid, with the appurtenances, to be the right of him the said D. as those which the said D. hath of the gift of the said A. and C. and those they have remised and quit-claimed from them the said A. and C. and their heirs to the aforesaid D. and his heirs for ever. *And moreover* the said A. and C. have granted for themselves and the heirs of the said A. that they will warrant to the aforesaid D. and his heirs, the aforesaid tenements with the appurtenances against them the said A. and C. and the heirs of the said A. for ever. *And further*, the said A. and C. have granted for themselves and the heirs of the said C. that they will warrant to the aforesaid D. and his heirs, the aforesaid tenements with the appurtenances against them the said A. and C. and the heirs of the said C. for ever. And for this, &c.

Taken, &c.

## ANOTHER FORM.

*And the agreement* is such, (that is to say) that the said A. and C. D. and F. and G. have acknowledged the aforesaid tenements, and common of pasture, with the appurtenances,

to be the right of the said J. as those which the said J. and L. have of the gift of the said A. and C. D., and F. and G., and those they have remised and quit-claimed from the said A. and C. D., and F. and G. and their heirs to the said J. and L. and the heirs of the said J. for ever. *And moreover*, the said A. and C. have granted for themselves and the heirs of the said C. that they will warrant to the said J. and L. and the heirs of the said J. the aforesaid tenements and common of pasture, with the appurtenances, against them the said A. and C. and the heirs of the said C. for ever. *And further* the said D. and F. have granted for themselves and the heirs of the said F. that they will warrant to the said J. and L. and the heirs of the said J. the aforesaid tenements and common of pasture with the appurtenances against them the said D. and F. and the heirs of the said F. for ever. *And also* the said G. hath granted for himself and his heirs that he will warrant to the aforesaid J. and L. and the heirs of the said J. the aforesaid tenements and common of pasture, with the appurtenances, against him the said G. and his heirs for ever. And for this, &c.

Taken, &c.

The following is the form of concord in a fine *sur conuzance de droit tantum*.

*And the agreement* is such, to wit, that the aforesaid E. hath acknowledged the aforesaid tenements with the appurtenances to be the right of the said C. *And* he hath granted for himself and his heirs that the aforesaid tenements with the appurtenances which W. R. and A. his wife, hold for the term of the life of the said A. of the inheritance of the said E. on the day on which this agreement is made, and which, after the decease of the said A. ought to revert to the said E. and his heirs; shall after the decease of the said A. entirely remain to the said C. and his heirs for ever. *And* the aforesaid E. hath granted for himself and his heirs that he will warrant to the said C. and his heirs, the aforesaid tenements with the appurtenances in such manner as is aforesaid, against him the said E. and his heirs for ever. *And* for this, &c.

*A fine sur concessit* may be in this form.

*And the agreement* is such, to wit, that the aforesaid C. H. and E. have granted to the aforesaid A. the aforesaid tenements with the appurtenances, to have and to hold the aforesaid tenements with the appurtenances to the said A. from the feast of the Annunciation of the blessed Virgin Mary last past, until the full end and term of twenty-one years from thence next ensuing, and fully to be

complete and ended. *Yielding and paying* therefore yearly to the aforesaid C. and E. and the heirs of the said C. one pepper-corn at the feast aforesaid during the term aforesaid, if it be demanded, and two fat capons at the feast of Easter yearly, during the term aforesaid. *And* the aforesaid C. and E. have granted for themselves and the heirs of the said C. that they will warrant to the aforesaid A. the tenements aforesaid, with the appurtenances, against them the said C. and E. and the heirs of the said C. during the term aforesaid, *And* for this, &c.

Taken, &c.

A *fine sur grant et render* is generally in this or the like form; varying according to circumstances.

*And the agreement* is such, to wit, that the aforesaid M. hath acknowledged the aforesaid tenements with the appurtenances to be the right of the said J. as those which the said J. hath of the gift of the aforesaid M. And those he hath remised and quit-claimed from himself the said M. and his heirs to the aforesaid J. and his heirs for ever. *And moreover* the said M. hath granted for himself and his heirs that he will warrant the aforesaid tenements with the appurtenances to the said J. and his heirs against himself the said M. and his heirs for ever. *And* for



this acknowledgment, remise, quit-claim, and warranty fine and agreement the said J. hath *granted and rendered* (x) to the said M. the aforesaid tenements with the appurtenances in the same court *to have and to hold* the said tenements with the appurtenances to the said M. and the heirs which the said M. shall beget on the body of L. his now wife. *And* if it shall happen that the said M. shall die without heirs begotten by him on the body of the said L. *then* the aforesaid tenements with the appurtenances entirely to remain to the said L. during her life. *And* after the decease of the said L. the aforesaid tenements with the appurtenances entirely to remain to the said J. and his heirs for ever.

The parties to every concord are

The conusor,

The conusee,

and the concord must name or refer to the parties and the parcels, and contain words of grant, limitation, &c. and the warranty to be entered into between the parties.

1st. Of the parties.

The fine must be between the same persons as are named parties in the original

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(x) This form differs from the precedents; but it is understood to be correct.

writ. (y) A stranger to the writ cannot be the grantee of an immediate estate. (z) To this general rule there are these exceptions,

*Viz.* a reversioner received on default (a) by a tenant for life; or a person who comes in as vouchee (b) in a real action, may be the deforciant, since the *reversioner* or *vouchee* becomes party to the suit, and stands in the place of the person against whom the writ was sued. But a *vouchee* cannot, with effect, levy a fine to a stranger.

Such fines, however, are voidable only, and not void. (c)

And in a fine *sur grant et render* the render may be to a stranger, by way of remainder after a particular estate; (d) but the grant of the first or immediate estate must be to a person who is a party to the writ. (e) If it is to two, of whom only one is named in the writ, the fine is voidable, as to him, for error. (f)

### *Of the Parcels.*

2dly. No parcels besides those comprised in the writ, can be included with effect in

(y) Co. Read. 6.

(z) 3 Rep. 5.

(a) Co. Read. 11.

(b) 3 Rep. 29, b.

(c) Litt. 569. Co. Litt. 353.

(d) Co. Read. 6.

(e) 3 Co. 5.

(f) Owen v. Morgan, 3 Co. 5.

the concord of the fine. These alone are the lands of which the courts have jurisdiction by virtue of the writ. A fine levied of any other lands (*g*) is levied without a proper authority to warrant it, and to this extent, the fine will be erroneous. But in a fine *sur grant* of lands, there may be a render of rent issuing out of the same lands. (*h*) For as a suit is depending of these lands; a rent issuing out of these lands, may be rendered by the conusor to the conusee.

So when the grant is of the *intirety*, the render may be of a *third* part; but if the grant is of a third part, the render cannot be of any larger or other share. (*i*)

So in all fines the concord may distribute the parcels, by granting a divided part to one and the residue to another; or an undivided share to one, and an undivided share to another.

So when the grant is in fee, the render may be for a particular estate. (*k*). But the render cannot be in fee, when the grant is expressly, or, by construction of law, for a particular estate.

Lord Coke, (*l*) gives the rule in these terms;

(*g*) Co. Read. 6. 2 R. Abr. 14.

(*h*) Co. Read. 11. 2 R. Abr. 14. 2 Inst. 514.

(*i*) 2 R. Abr. 15. 1 Cr. 66, 67.

(*k*) 2 R. Abr. 15.

(*l*) 2 Inst. 514.

a man may grant and render to B. a rent of the same manor contained in the fine, but not out of any other land ; neither can the grant and render be of any thing *collateral* to the land, &c. contained in the writ, or of another nature ; and neither issuing out of nor incident to the land contained in the original.

When the parcels lie in different counties, the practice used to be, to have several writs of covenant ; one for the parcels in each county ; and only one concord and one fine. (m) The practice now, in pursuance of a regulation which has lately taken place, is to have several concords and distinct fines. In consequence of an order of Lord Chancellor Hatton ; (n) several owners of distinct tenements will not be allowed to join in the same fine ; unless the lands are under the value of 200*l.* and there is an affidavit to that effect.

This rule has an exception of coparceners, joint tenants, and tenants in common ; and the rule is merely for the regulation of the conduct of the officers, and if not enforced, the fine will be effectual.

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(m) 2 Inst. 512. Dyer, 227. 1 Cruise, 32.

(n) Wils. 47. 1 Cruise, 32.

*Of Words of Limitation.*

In a fine *sur conusance de droit come ceo*, &c. the fee will pass without any words of inheritance. (o) Words of limitation, however, if added, will confine the effect of the fine, to the particular estate which is expressed, as for life, in tail, &c. (p)

So no words of limitation are necessary in a fine *sur conuzance de droit tantum*; (q) but being added, they will have the effect of the intention they express.

In fines *sur grant et render* and fines *sur concesserunt*, words of limitation are generally added, and they are necessary; for a grant by fine of the *tenements*, will not, without express words, pass more than an estate for life.

Except as to lands of the tenure of *gavelkind*, (r) the judges will not allow lands to be limited to two and their heirs. They require the fine to be to two and the heirs of one of them. (s)

Certainty is the alledged ground of insisting on this practice, since it is the object of

(o) Co. Litt. 9, b.

(p) *Hunt v. Bourne*, 1 Salk 340. Dyer, 69. Shep. Prac. Couns. 155. Co. Read. 4.

(q) Co. Litt. 9.

(r) *Rob. Gavelk.* 132.

(s) 5 Rep. 58. 2 Mod. 49.

finer to settle the possession, not only for the present, but for the future, in the most certain and secure manner ; but what reason is there for allowing a fine of lands of gavelkind tenure to be levied to two and their heirs, which does not equally apply to other lands ? May not two persons be equally interested as the grantees of other lands, as well as those of gavelkind tenure ? Though other lands descend to one son, while gavelkind lands descend to all the sons as one heir, yet other lands may, in some cases, descend to several females, and even to several males being the descendants of females, as coheirs.

Besides, the grant to two is totally unconnected with any reason which concerns a grant by two ; and there is an apparent absurdity in supposing that the right cannot be acknowledged as in two, when the law recognises and sanctions a grant to two, as joint tenants in fee. This practice then is one of those anomalies which destroys the beauty of the juridical system, by introducing a case totally void of any support in principle.

Accordingly, a fine though levied to *two and their heirs* will be allowed to be of force. (†)

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(†) 2 Mod. 49.

The rule is *fieri non debuit sed factum valet* (u).

So it is said a fine ought not to be levied on *condition*, and yet if the fine passes, it will be effectual; and in a render it is allowed, that a condition shall be inserted. And it is also said, that a fine ought not to be with an *exception*, a clause of saving, of re-entry, &c. But in practice an exception is allowed, and it would be absurd if it were not: and in fines *sur grant et render*, a clause of re-entry may be introduced in the rendering part of the fine.

A fine may be good with or without a warranty.

In general a warranty is added; and it should be adapted to the circumstances of the case, and the intention of the parties.

As between a purchaser and seller, or even a settler for the benefit of other persons, the warranty ought not to extend beyond the agreement of the parties.

A warranty in a fine by husband and wife, will enable the conusee to maintain an action of covenant against the wife (v).

When the fine is to two and the *heirs* of

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(u) 2 Co. 74. 5 Co. 38, b.

(v) Wotton v. Hale, 2 Sand. 77

*one*, the warranty ought to be conformable to the grant.

It is said that a warranty from two and *their* heirs ought not to be allowed. To this there is an exception, when the lands are of gavelkind tenure.

In practice, the general rule, that there cannot be a warranty from two and their heirs, is avoided by taking distinct warranties from each and his heirs, or one warranty from both, for themselves and the heirs of one of them, and another from both, for themselves and the heirs of the other of them. Thus that is accomplished by indirect means which is not allowed of in direct terms.

*Fourthly.* The note of the fine is only an abstract of the writ of covenant, and of the concord. It names the parties, the parcels, and the agreement.

*Fifthly.* The foot of the fine includes the whole matter. This is in truth the chirograph, and the document of which the indentures are a transcript, or at least from which they are made.

It begins with these words, *This is the final agreement*, and it rehearses the names of the parties, the parcels, and the day, year, and court in which, and before whom, the fine is levied.



When the chirographer makes out the indentures, the fine is said to be engrossed, and the chirograph is conclusive evidence of the fine. (w)

But the fine is perfect before it is engrossed, and evidence may be given of it without producing the indentures.

Of the proclamations, when there are any, evidence must be given by producing and proving an examined copy of them. The usual indorsement on the indentures will not be received as evidence, in a court of justice, of the proclamations.

As to the indentures, the chirographer is the officer intrusted by law to transcribe them from the records, and full credit is, for that reason, to be given to their authenticity.

But no such authority resides with him in regard to the proclamations.

*When a fine is complete as a conveyance.*

Till the writ is *returnable* the court has no jurisdiction; for this reason, till the writ is returnable, a fine is not complete; so that the death of the parties, before the writ of entry is returnable, will avoid the fine (x).

(w) Gilb. Evid. 244. B. N. P. 229.

(x) Wright v. Mayor of Wickham, Cro. Eliz. 463.  
Clements v. Langborne, 2 Lord Raym. 572.

It is sometimes said, that the fine is not complete till the king's silver is paid.. On this point it is to be observed, that the king's silver is not payable till the writ of covenant is returnable: and it cannot be paid at an earlier period; so that if the party dies, after the writ of covenant is returnable, but before the king's silver is paid, a *caveat* against the fine may be entered, and the fine will be stopped: but if the king's silver is paid, even after the death of the party, on a writ of covenant made returnable in his life-time, the fine will be complete, and there are no means of impeaching it (y).

The acknowledgment of the concord is the principal act of the parties (z). This and the payment of the king's silver are the only substantial parts proceeding from the parties.

But there must be an original writ. That writ must be sued out, and be returnable, before the entry of the king's silver can be made on the same.

But this writ may, as to fines levied in the court of Common Pleas, be made returnable as of a preceding, or a subsequent term.

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(y) *Farmer's case*, 2 Inst. 511. Hob. 330.  
*Harnies v. Micklethwaite*, Barnes, 214.

(z) 2 Inst. 511.

If it is returnable of a preceding term; the fine will be good, and may be recorded, notwithstanding the death of one of the parties *during the vacation*, and even before actual payment of the king's silver, so as the king's silver is afterwards paid: and, as already noticed, the king's silver may be paid after the death of the party, unless prevented by a caveat entered for that purpose at the king's silver office (*a*).

But if the writ of covenant is made returnable as of the next term, or of any particular return in a term, the death of one of the parties in the mean time, will, as to him, vitiate the fine; since, as far as he is concerned, there is no longer a conusor or conusee (*b*).

The practice is to take the acknowledgment in the vacation, and to have the writ of covenant returnable, sometimes as of the preceding, and sometimes as of the succeeding term. In this practice there is no error; for the time when the fine is acknowledged is immaterial.

The writ of covenant, as of a succeeding term, may be returnable as of the first day of the term, or any other return day; and the

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(*a*) *Barber v. Nun*, Barnes, 218.

Booth's Op. in printed Cases & Op. 1 vol. 437.

(*b*) 1 Cruise, 27.

fine, when levied, will have relation, in point of legal operation, to that day, without any regard to the time at which the fine is acknowledged, or the king's silver paid.

In *Lloyd v. Say & Sele* (c), a fine acknowledged in March, and recorded as a fine of Michaelmas term, was allowed to be free from the objection that it did not make a good tenant to a writ of entry in a recovery suffered of Michaelmas term.

This doctrine of relation has been carried so far, that a conusee of a fine levied of a preceding term, will avoid a statute entered into in the vacation, and before the fine was acknowledged (d).

And in P. W. 3 vol. 170, in a note, a fine levied on a writ of covenant returnable as of a subsequent term, is considered as a revocation of a will published after the fine had been acknowledged, and the deed of uses executed.

But a doubt has been entertained of the law of this point, and the case of *Selwyn v. Selwyn* (e) appears to afford a principle, on which that doubt may be supported: Why should not the fine and deed of uses operate as part of the same assurance, and have relation to the

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(c) *Lloyd v. Say and Sele*, 1 Br. P. Ca. 379.

(d) *Jenk. Cent.* 250.

(e) 2 Burr. 1131.

deed of uses, as the principal part of that assurance?

On account of these cases, concerning the relation of fines, to the return day of the writ of covenant, it will be prudent, when a fine is levied to gain a title by non-claim, and a feoffment is to be made to acquire the freehold, as a foundation for the fine, that the fine shall be so levied, that the relation may be subsequent to the date of the livery on the feoffment.

A purchaser, relying on a fine, as the efficient part of a conveyance, by a married woman, or by a tenant in tail, should, before he pays his purchase-money, take care that the fine is acknowledged, that the writ of covenant on which it is levied is returnable, and that the king's silver has been paid.

*Secondly, When a fine is complete, as operating under the statute of proclamations.*

By the several statutes of proclamations, two objects are to be obtained.

*First.* To bar the issue in tail (*f*).

*Secondly.* To gain a title by nonclaim (*g*).

*First.* To bar the issue in tail, there must be proclamations. And hence fines levied in courts of ancient demesne, or in other

(*f*) Stat. of 4 H. VII. 32 H. VIII.

(*g*) 4 H. VII.

courts, not having the power by statute law of proclaiming their fines, will not bar the issue claiming under an estate tail<sup>(h)</sup>. These proclamations may be made in the life time, or after the death, of the conusor or conusee; and even after a claim has been made by the issue in tail: and when the proclamations are made the operation of the fine as a *conveyance*, giving a good title against the issue, has relation to the return of the writ of covenant.

By whom a fine may be levied, so as to bar the issue in tail, has been considered in a former part of this chapter, and will be more fully treated on in a subsequent part.

It is not sufficient, that the person by whom the fine is levied is merely a *parent*, &c. <sup>(i)</sup>.

*Secondly.* To bar strangers by nonclaim, the proclamations are an essential part of the assurance. The period of nonclaim begins to run from the time when the last proclamation is made. Of course it is from that time that the period of limitation prescribed by the statute of nonclaim must be computed; unless perhaps when the fine is executory, and in that case it has been

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(h) *Hunt v. Bourne*, Salk. 339.

*Parslow's case*, 3 Co. 90, b.

(i) *Shep. T.* 20. *Hob.* 323.

doubted, whether the period of nonclaim will begin to run till the fine is executed (*k*). According to Lord Coke, the period of nonclaim on a fine at the common law, run on an executory fine, from the time at which the fine was levied (*l*).

The proclamations may be void for error in them, as not made at the period prescribed by the statute, by which they are regulated, or as entered, as having been made on a *dies non juridicus*, as on a Sunday, or out of the term. Notwithstanding an error in the proclamation, the fine may be good by the rules of the common law, as a common law conveyance, or an estoppel (*m*). The issue in tail, however, are not bound by estoppels. When the fine itself is avoided for error, the fine will lose its effect, under the statute of non-claim, and also the statute for barring entails, as well as at the common law.

But as to the issue in tail, these observations must be understood to be confined to error in form in the fine; in short, the want of an efficient fine: for though a fine may be avoided as to strangers, and as far as relates to its common law operation, by the plea of *partes fines*, &c. or defeated by the

(*k*) Per Lord Redesdale, 1 Irish Rep. in Chan.

(*l*) Co. Read.

(*m*) Dyer, 216, a. 1 Balst. 206.

entry of a person who has some right independent of the intail, as by a tenant for life who *was disseised*; or the issue in tail makes his claim after the fine is levied, and before the proclamations are made, the proclamations, when made, will be a bar to the issue (n).

In regard to persons to be barred by non-claim, it will be competent to them to plead, in answer to a fine, that *partes fines nihil habuerunt*, and, by that means, avoid the fine, and, as a consequence, the effect of the proclamations.

The difference between a *fine*, as a conveyance, an estoppel, a bar to issue in tail, and a bar under the statute of non-claim, is now to be considered.

*First, as a conveyance.*

A fine, as a conveyance, must proceed from the seisin of the party. It is, in general use, as a conveyance by a married woman, since, on account of her coverture, she is not competent to convey without some act of record, on which she may be privately examined.

When a fine is levied by a tenant in fee, it, like any other ordinary conveyance, merely passes the estate which is vested in the party. When levied by a tenant in tail, it passes a

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(n) Hunt v. King, Cro. Eliz. 589, 610.  
Parslow's case, 3 Co. 90, b.



*base* or determinable fee, unless he has an estate-tail in possession (*o*), and then, instead of operating as a conveyance, it discontinues the estate-tail, and passes the fee-simple under a new title.

If the tenant in tail has previously conveyed a base fee, his fine, as a *distinct* assurance, operates rather as a confirmation or release, in extinguishment of the intail, than as a conveyance, and no discontinuance will be effected. The ground of this distinction is, that the tenant in tail is no longer seised, by force of the intail, and no other tenant in tail, except a tenant of an estate-tail in possession, can create a discontinuance (*p*). For this reason, a tenant of an estate-tail, after an estate for life, cannot discontinue (*q*), even although the tenant for life joins in the fine (*r*).

But when a lease and release are made by a tenant in tail, and a fine is afterwards levied, in pursuance of a covenant contained in the indenture of release, and as part of the same assurance, the fine will be a discontinuance (*s*).

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(*o*) Seymour's case, 10 Co. 95.

Doe v. Whitehead, 2 Burr. 704.

Driver v. Hussey, 1 H. Blackst. 269.

(*p*) Seymour's case, 10 Co. 95.

(*q*) Driver v. Hussey, 1 H. Blackst. 269.

(*r*) Bredon's case, 1 Co. 76.

(*s*) Doe v. Whitehead, 2 Burr. 704.

A fine by tenant for life, if the limitation in the fine is confined to the period of his life, will operate merely, and simply, as a conveyance.

So a fine by a tenant for life in remainder, after another estate for life, though it may be a forfeiture, cannot divest any estate, when the owner of the prior estate continues in possession (*t*).

But if tenant for life in possession, evies a fine, which imports to convey an estate in fee, in tail, or for another life, it will operate to divest the estate of those in remainder (*u*). Of course it passes a tortious estate, and turns the estate of those in remainder or reversion into a right of entry. On this point Mr. *Serjeant Williams*, in one of his very useful notes, observes (*v*), "It seems to be an established rule, that an actual entry is necessary to avoid a fine," (with proclamations it must be understood) "levied by tenant for life. However, in the case of *Doe*, lessee of *Compere v. Hicks*, it was said by counsel in argument, that doubts had been entertained, whether a fine, levied by tenant in tail, had any operation; but however

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(*t*) *Carhampton v. Carhampton*, 1 Irish Term Rep. 567.

(*u*) *Fœcus v. Salisbury*, Hard. 400. Co. Litt. 251, a, b.

(*v*) 1 Saund. 319.

“such doubts may have arisen, there seems  
“no foundation for them.”

But the fine of a tenant *for years*, a copyholder, or owner of any chattel interest, has no operation on the freehold. Unless the freehold is acquired by means of a feoffment, no estate will be divested. Any attempt to set up the fine as a bar, may be answered by the plea of *partes finis nihil habuerunt* (*w*).

*Secondly, Estoppel.*

When a fine is levied by a person who has no *estate* or seisin, it may operate as an estoppel; in other words, as a conclusion, on any right he might otherwise have had, or on any claim he might otherwise have asserted.

Thus a fine levied by a person who afterwards becomes heir, will be an estoppel to his claim as heir; and yet a release by him by deed, while he had merely a hope or chance of succession, would not be a bar to his title (*x*).

So a fine levied by a person who has a *contingent interest* will, in some cases, bar; in others, bind that interest (*y*).

And if a person who has merely a right of

(*w*) *Focus v. Salisbury*, Hard. 400.

*Fermor's case*, 3 Co. 77.

*Smith v. Parkhurst*, 18 Vin. 413.

(*x*) *Sir Marmad. Wivell's case*, Hob. 45. 1 R. A. 428, b. 10.

*Morse v. Faulkner*, 1 Austr. 11. 3 T. Rep. 365.

(*y*) *Weale v. Lower*, Pollexf. 54.

entry, as a disseisee, or a right of action as a discontinuee, levies a fine to a *stranger*, the person in possession may take advantage of this fine, to preclude the party from claiming the land in opposition to his own fine (2).

On the authority of *Vick v. Edwards* (a), there was, at one period, a prevailing practice, to require a fine from two persons, when an estate was limited to them and the survivor of them and his heirs, in the hopes of acquiring the fee by means of the estoppel. On that practice the following observations may be deemed relevant. They have more than once been allowed their weight in practice, by gentlemen in whose opinion confidence is deservedly placed.

“ The more this title is considered, the  
 “ more reason there is to be satisfied that it is  
 “ neither marketable, nor can be accepted  
 “ with safety, either by a mortgagee, or a  
 “ purchaser, if the conclusion drawn in a former  
 “ opinion, that the fine levied by J. N.  
 “ and A. his wife, extinguished their contingent  
 “ remainder in fee, is well founded.  
 “ Now that the remainder was extinguished  
 “ seems to flow from the nature and operation  
 “ of fines, and the principle of tenures, and

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(a) Buckler's case, 2 Co. 55.

(a) 3 P. W. 372.

“ to be a direct consequence of the fourth  
“ resolution in *Buckler's case*, 2 Co. 55, a.  
“ *Weale and Lower*, Pollexfen, 54, and  
“ *Moor's case*, Palmer, 365. It was resolved  
“ in the first of these cases, that if the dis-  
“ seisee levy a fine to a stranger, the disseisor  
“ shall hold the land for ever; for the disseisee  
“ against his own fine, cannot claim the land,  
“ and the disseisee cannot enter. The right  
“ which the cognisor had cannot be transferred  
“ to him, but the right by the fine is extinct,  
“ whereof the disseisor may take advantage.  
“ And in the second of these cases, that if  
“ the fine had been levied by *Thomas* in fee,  
“ this would have barred the estate of the  
“ heir, destroyed the contingent use, and  
“ operated to the benefit of the possession,  
“ as the fine of a disseisee to a stranger. In  
“ the third case, baron and feme were tenants  
“ in special tail, with remainder to *A.* in tail,  
“ the baron discontinued and died, then the  
“ wife levied a fine, and it was resolved that  
“ there was a discontinuance, and that the  
“ fine had strengthened the discontinuance,  
“ so that the feme could not enter, nor be  
“ remitted. Upon the same principle, a  
“ feoffment by a person who has a mere right  
“ or title of entry, though made to a stranger,  
“ will extinguish that title. Sir *Moyle Finch's*  
“ case, 6 Co. 70.

“ The only authorities in opposition to

From these deductions, it follows, that there are many cases in which a fine *sur concesserunt for years*, may be recommended, when it would be extremely injurious to conclude the title by a fine of the inheritance. This is particularly the case when there is a contingent interest of *inheritance*, or a *joint-tenancy* of the inheritance; and it is an object that the contingent inheritance shall not be destroyed; or that the joint-tenancy shall not be severed.

*Thirdly.* As a bar to the issue *in tail*.

The bar of the issue in tail depends on the statutes of 4 H. VII. and 32 H. VIII. That the issue may be barred, all that is necessary, is that a fine shall be levied by an ancestor, and duly proclaimed. The fine may be effectual, whether the person by whom it is levied, has a vested estate in possession, (d) reversion, or remainder; (e) a contingent interest, (f) or only a title of entry or of action; (g) and it will bar his issue even though the fine is levied before the intail descends on him, (h) or is levied after alienation. (i) It will under these circum-

(d) Shep. T. 20.

(e) Co. Litt. 372. Zouch v. Bamfield, 3 Co. 34. 88.  
Jenk. Cent. 274.

(f) Grant's case, 10 Co. 50, a.

(g) Zouch v. Bamfield, 3 Co. 88, 90 a. Jenk. Cent. 275.

(h) Hob. 285. Jenk. Cent. 274.

(i) 3 Co. 90. a.

stances even bar all collaterals claiming under the same intail, so as the right of the intail devolves to the person or his issue, by whom the fine is levied in other words, so as he or any of his issue becomes heir *de facto* to the intail ;(k) and the issue in *lineal descent* may be barred by the fine of their parent, being within the extent of the gift in tail, although the parent never becomes the heir.(l)

On this construction too, of the statutes, a fine levied by *one ancestor* alone, (m) when the gift in tail is to both ancestors, will be a bar to the issue, so as to extinguish the intail. At the same time, this fine will not affect the interest of the other ancestor, any further than to take from the estate tail its descendible qualities. The other ancestor will have a base or determinable fee, instead of an estate tail. The other collateral qualities, as the right of suffering a common recovery, will remain ; and the estate of the other ancestor may descend to the issue as his general heir. The sole effect of the fine is to preclude the issue from claiming as issue in tail. But a fine by a *father*, when the gift is to the *mother*, and her heirs of her body begotten by

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(k) Hob. 258. 332. Jenk. Cent. 274.

(l) Archer's case, 3 Co. 90, a. Mackwilliam's case, Hob. 333.

(m) Beaumont's case, 9 Co. 138. Baker v. Willis, Cro. Car. 476.

the father, will not bar the intail. He is merely a *parent*, not an ancestor. The lands are not intailed on him. He is named merely to describe those particular heirs of the body of his wife, who are within the scope of the intail.

So a gift to a man and his heirs of his body, will enable the son, after the death of the father, to bar the intail, so far as to exclude his brothers and sisters and their issue as well as his own issue; (n) but unless the intail had descended on him or his issue, his brothers or other collaterals would not have been barred. (o) So when a gift is made to a man and the *heirs males* of his body, with remainder to him and the *heirs females* of his body; a fine levied by him will bar both estates tail; since he is the ancestor to both intails. But when a gift is made to a man, and the *heir males* of his body, with remainder to him and the *heirs females* of his body, and he dies leaving a son and a daughter a fine levied by the son though it will bind his own issue, will not bind his sister or her issue. (p) So if limitations are made in favor of the first and other sons successively in tail, a fine levied by the elder son or his issue

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(n) Co. Litt. 372, a.

(o) *Bradstock v. Scovell*, Cro. Car. 434. Hob. 258, 333.

(p) *Shop. T.* 20.



will not bar the younger sons or their issue by force of the statutes of proclamations. Each son has a distinct intail; and the younger sons and their issue do not claim under the same intail with the person by whom the fine is levied. Also, but on a different ground, a fine by a younger brother or his issue, will not bar the elder brother or his issue claiming under the same intail; nor will the fine of the elder brother or his issue bar the younger brother or his issue, unless the elder brother or his issue becomes heir to the intail, either before or after the fine is levied. So a fine levied by a sister or an uncle, who is *pro tempore*, the heir in tail, will not bar a more immediate heir, who afterwards comes into existence. (q)

From these points, it will be collected, that a fine may be levied with effect so as to bar the intail, when a recovery could not be suffered so as to bar them.

*Bar by Non-claim.*

That a fine may operate as a bar by non-claim it must be duly proclaimed; and it is essential that one of the parties shall have an estate of freehold; so that the plea of *partes finis nihil habuerunt*, may not be relevant;

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(q) Hob. 383.

with the exception, that an equitable freehold in one of the parties, will, it should seem, be sufficient to support the fine against persons claiming under equitable remainders, &c. Also, that a fine may operate by nonclaim, there must be an *adverse possession*, understood with the qualifications which have been noticed in a former part of this chapter.

*On what Fines, Uses may be declared.*

On every fine which transfers an *estate*; even on a fine *sur grant et render*, uses may be declared.<sup>(r)</sup> By the render a common law seisin is transferred, and a declaration of uses will be valid. It seldom, however, happens, that a fine *sur grant et render*, is levied to uses. When uses are to be declared, all that can be accomplished by the render in the fine; or by the render united with the declaration of uses; may be accomplished by the declaration of the uses alone. At the same time it is observable, that the question has been raised whether uses may be declared on the estate rendered by a fine, and that question has been decided in favor of the declaration of uses. A case in *Clayton's Reports*, which may seem to the contrary, is reconciled by considering the interval which elapsed

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(<sup>r</sup>) Moor, 45.

as affording the conclusion that the grantee in the render took to his own use.

That a common law seisin passes, and that there is a declaration of uses, are the two essential circumstances to call the statute of uses into operation. When no estate passes by the fine; when its operation, instead of passing an estate is to release a title, or extinguish a right; then no uses are admissible, for there is no estate to supply a seisin to these uses.

*By whom Uses may be declared.*

Whoever *conveys* an estate by fine may declare the uses, to the extent of his ownership under that estate. (s) Thus tenant for life may declare the uses, during his estate for life; tenant in tail may declare the uses of the fine so long as the estate which passes from him, shall continue; and tenant in fee simple may declare the uses of that estate and the tenant of a remote estate in remainder or reversion, may declare the uses of such his interests; and each of several joint-tenants, tenants in common, and coparceners, (t) may declare the uses of the fine as to his particular share: and when several persons join in a fine, and in the declaration

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(s) Beckwith's case, 2 Co. 57. Dougl. Rep. 25. 3 P. W. 210.

(t) 2 Co. 58, a. Palm. 405.

of the uses, the uses will proceed from each person, and depend on his estate, according to the nature and relative degree of his ownership. Thus if tenant for life with remainder to another in tail, with remainder to another in fee, join in a fine, and in a declaration of the uses, the uses will proceed from the tenant for life during his interest; from the tenant in tail during the continuance of the ownership under the intail; and from the owner of the fee, after the ownership under these particular estates is determined, and in the mean time subject thereto. Thus the persons claiming under the uses, will have a title in the same manner as if it was derived under a joint conveyance made by the tenant for life the remainder man in tail and the remainder man or reversioner in fee; and under such joint conveyance there is no merger, notwithstanding there is an union of estates.(u)

The next rule is that one person cannot declare the uses of a fine, levied by another.

Thus if two joint-tenants concur in levying a fine, neither of them singly can declare the uses of more than his share.(v)

The same point is equally applicable to coparceners, and tenants in common.

So when tenant for life and the remainder-

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(u) Bredon's case, 1 Co. 76. Treport's case, 6 Co. 14.

(v) 2 Rep. 58, a.

man in fee, join in a fine, a declaration of the uses by one of them, will not supply the want of a declaration of uses by the other.(w)

And where tenant for life, a tenant in tail, and a tenant in fee, joined in a fine, a declaration of uses by the tenant for life, and tenant in tail, had no operation on the uses of the ultimate remainder in fee. The use of that estate resulted to its former owner, for want of a declaration by him.(x) And upon principle, a fine levied by a person who has an *estate*, and one who has merely a *right* or title, will operate as an extinguishment of the right, and leave the uses completely in the power of the owner.(y) And under a fine by the owner and a *stranger*, the uses will result to the owner alone, or he alone may declare them.

To the general rule, there is an exception, or rather the semblance of an exception, arising from the peculiar connexion between *husband* and *wife*, when a fine is levied by them, of lands held by them in right of the wife. The rules respecting the uses of their fine are

1st. The wife alone cannot declare the uses of her fine.(z)

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(w) Dougl. 25.

(x) *Roe v. Popham* and others. Dougl. Rep. 24.

(y) *Becket's case*, 2 R. A. 789.

(z) *Beckwith's case*, 2 Co. 57.

2d. The husband alone cannot declare the uses, against the consent of his wife, appearing by deed, or by any act in *pais*.

3d. The husband alone may declare the uses, unless his wife disagrees to these uses during the coverture. (a)

4th. They may jointly declare the uses.

5th. When there are several declarations by them, and they are different, these uses as far as they are different, will be void. (b)

But as far as they agree in declaring the uses of the fine, either as to *part of* the lands or as to part of the *estate* of the lands, so far the uses will be deemed good, and rejected only so far as there is a variation in their several declarations. But if they disagree in declaring the use of the *first* estate of any part of the lands; all the ulterior uses of that part will be void. This is all that was decided in *Beckwith's* case; though the conclusion drawn from that case, has been, that the first use will be void, although the husband and wife agree in declaring that use, provided they differ in the ulterior uses. It will be difficult, however, to support that inference from *Beckwith's* case; and still more difficult to reconcile it with principle. It is

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(a) *Beckwith's* case, 2 Co. 57.

(b) *Ibid*.

true Lord *Coke* calls the attention of the reader to the distinction between an agreement in the uses declared by the husband and wife of *part of the land*; but taking this distinction with its context, it must be understood as referable to the particular case of a variation in the first use, from the impossibility in point of law of there being such a reversion as the wife intended to reserve, if her husband's declaration of the use shall be established. The language of the resolution more clearly leads to this conclusion or rather interpretation of the context. All that is said in reporting the resolution is to this effect :

“ Although the variance was in the first particular use (the wife limiting it to her alone for her life, and the husband limiting it to him and his wife for their lives) and all the other uses in remainder limited in both the indentures, are, according to both their consents, yet all the uses are void. But if there be two joint-tenants, or two having several estates, and they join in a fine, and one declare the use in one manner, and the other in another manner, the same is good for each of their parts, for the declaration of the use shall be directed and governed according to their estates and interests; but between husband and wife, the estate is only in the wife,

“ and so the difference. But if the husband  
 “ and wife agree in the limitation of the use of  
 “ *part* of the land, and vary in the limitation  
 “ for the *residue* of the land, it is good for  
 “ *part*, and void for the residue.”

“ So note, reader, a difference between va-  
 “ riance, touching the limitation of the use of  
 “ *part* of the estate of the land, and touching  
 “ the limitation of the use of *part of the land*  
 “ itself.”

Now in this resolution, there is not a single syllable which denies the validity of the declaration of the uses when the husband and wife agree in limiting an estate for life to *A.* though they do not agree in the limitation of the ulterior uses. The language of Lord Bacon is, if they *sever*, then it is good for so much of the inheritance, as they concurred in. (c)

### *Of resulting Uses.*

It is also to be observed that as far as no uses shall be declared, or the use of the fee shall be limited in contingency, (d) the use will result to the former owner, according to the estate he had at the time of levying the fine; or if several persons who have distinct

(c) *Bac. on Uses*, 67.

(d) 2 Roll. Abr. 789. 2 Co. 58.



estates as tenant for life and remainder-man in fee, or as joint-tenants who held to them and the heirs of one, join in a fine without declaring any uses, the uses will result according to the former ownership. (e) The exceptions are, that no use will result on a fine *sur grant et render*, and that the conusee in a fine may aver an use in himself, notwithstanding there is no express declaration; (f) and also that a tenant in tail instead of having his old estate tail under a resulting use, will have a fee simple, in case the fine operates as a discontinuance; and a base or determinable fee, in case the fine operates merely and simply as a conveyance.

The books are involved in some obscurity on this point. They say, the fine shall enure to the old or former uses. (g)

But they are to be understood with the qualification that the uses result according to the former ownership, and not so as to revive the intail. This point has been expressly decided as to recoveries, and is equally relied on as to uses resulting from a fine. (h) When

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(e) 2 Co. 58. Mo. 46.

(f) *Altham v. Anglesey*, Gilb. Eq. Ca. 17. *Roe v. Popham*, Dougl. 24. *Thrustout v. Peake*, Str. 12.

(g) *Walker v. Snow*, Palm. 359, *Argol v. Cheney*, Latch 82, Dougl. 25.

(h) *Hodges v. Fowler*, in the Exch. 1777. *Moxon v. Moxon*, ib. Com. Dig. Uses, D. 2. *Nightingale v. Ferrers*, 3 R. W. 207.

the use of the fee results; that fee will be descendible from the first purchaser of the estate. For this reason, a fee which descended *ex parte materna*, will, under the resulting use, be descendible in like manner. (i)

So if an estate tail was taken by descent *ex parte paterna*, the fee taken by resulting use will be descendible as if the donee in tail had taken the fee as the purchasing ancestor. (k)

And whether the use results, or is expressly declared, the same course of descent will prevail.

But a fee taken under the *render* of a fine is a new estate, and the conusee in the render will be deemed the purchasing ancestor. The fine *sur grant et render* is a double conveyance, and partakes of the nature, and has the effect of a feoffment and re-enfeoffment. (l)

*Of Deeds to lead, and Deeds to declare the Uses of Fines.*

When a fine is levied *after* and in pursuance of a covenant or agreement to levy a fine and declare the uses thereof, the deed containing such declaration or agreement, is

(i) *Abbot v. Burton*, Salk. 590. *Fenwick v. Mitford*, 1 Leo. 182. Co. Litt. 22, b.

(k) *Roe d. Crow v. Baldwere*, 5 T. Rep. 104. *Martin d. Tregonwell v. Strachan*, 5 T. Rep. 107, in a note.

(l) *Price v. Langford*, Salk. 337.

correctly denominated a deed to lead the uses of the fine; while a deed declaring the uses of a fine, takes its denomination from the circumstance that the deed is subsequent in date to the fine, and executed after the fine has been levied.

The subject of deeds to lead, and of deeds to declare the uses of fines, is of considerable interest to the profession, since these deeds frequently occur in practice, and produce a material change in the title. To state the cases, and the rules of law on which they are grounded, and give the proper forms of deeds, will require more space than can be allotted for them in this volume. This learning will be the subject of the first chapter of a future volume.

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## APPENDIX.

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### FORM I.

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*Form of Recovery Deed of Lands in different Counties,  
for the joint Lives of the Tenant and Vouchee.*

**T**HIS INDENTURE, of three parts, made the            day of            in the 46 Geo. III. and in the year of our Lord 1805; between E. M. of, &c. *the intended vouchee*, of the first part; A. B. of, &c. *the intended tenant*, of the second part; and C. D. of, &c. *the intended demandant*, of the third part. Whereas by indentures of lease and release, bearing date respectively on or about the 9th and 10th days of May, in the year 1749, and made, or expressed to be made between H. M. of, &c. tinman, and Hannah his wife, of the one part; and W. K. of, &c. gent. of the other part. The messuage and hereditaments hereinafter in part described to be situate in the parish of T. in the said county of W. were conveyed and assured, after divers estates for life, and in tail, which are all now determined, to the use of the said E. M. therein described as the daughter of the said H. M. by the said H. his wife, and the heirs of her body lawfully issuing. *And whereas* by other indentures of lease and release, also bearing

[A]

date respectively, on or about the 9th and 10th days of May, 1749, and made or expressed to be made between the said H. M. and H. his wife, of the one part, and K. M. of the other part; all those, the messuage and hereditaments hereinafter in part described to be situate in the parish of H. in the county of W. were conveyed and assured, after and subject to several particular estates for life and in tail, all of which are now determined, to the use of the said E. M. and the heirs of her body lawfully issuing. *And whereas* the said E. M. is desirous of suffering two or more common recoveries for the purpose of barring the several estates tail, limited to her as aforesaid, and enlarging the same estates tail, into estates in fee simple. *And whereas* the said E. M. is seised of divers other messuages, lands, tenements, and hereditaments, herein after described: and although it is understood that the said E. M. is seised of the same messuages and hereditaments for an estate in fee-simple, it is deemed advisable that the same shall be comprised in the recoveries hereinafter agreed to be suffered, for the purpose of barring all estates tail, if there are any, of the said E. M. in the same messuages and hereditaments. *Now this indenture witnesseth* that for docking, barring, and destroying all estates tail, of and in the messuages and other hereditaments hereinafter released, or otherwise assured, or intended so to be, and all reversions, and remainders, expectant on the same estates tail, and all conditions, and collateral limitations annexed thereto, or affecting the same; and also in consideration of 10s. of lawful money of the

united kingdom of Great Britain and Ireland, current in Great Britain, to the said E. M. well and truly paid by the said A. B. immediately before the execution of these presents, the receipt whereof is hereby acknowledged, she the said E. M. *hath* granted, bargained, sold, aliened, released, and confirmed, and by these presents *doth* grant, bargain, sell, alien, release, and confirm unto the said A. B. (in the actual possession of the said A. B. now being in virtue of a bargain and sale thereof made to him by the said E. M. in consideration of 5*s.* paid to her by the said A. B. by indenture bearing date on the day next before the day of the date, and executed before the execution of these presents, for one whole year, to be computed from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute made for transferring uses into possession). All that messuage or tenement, and all houses, outhouses, buildings, barns, stables, gardens, orchards, curtilages, and appurtenances whatsoever thereunto belonging. And also all those four several closes, pieces, or parcels of land, meadow, or pasture ground, now or formerly commonly called or known by the several names of,

or by any other name or names, whatsoever, containing in the whole by estimation about twelve acres, be the same more or less, situate, lying, and being in the parish of T. and county of W. and near the highway leading from cross, towards

in the same parish heretofore in the tenure or occupation of J. H. late in the tenure or occu-

pation of J. A. his assigns, or under-tenants, and now or late of                      And also all that messuage, or tenement, formerly in the possession of W. L. but afterwards of R. C. together with all barns, stables, buildings, houses, out-houses, shops, gardens, orchards, yards, fold-yards, and backsides, to the said last mentioned messuage or tenement belonging. And all those two closes, leasows, meadow, or pasture ground, heretofore into five parts divided, containing, in the whole by estimation eleven acres or thereabouts, be the same more or less: all which said messuage or tenement, buildings, lands, closes, pasture-ground, and premises last mentioned, are now or were formerly called or known by the name of the

and were heretofore in the tenure or occupation of the said W. L. his under-tenant or assigns, but afterwards of the said R. C. his under-tenants or assigns, and are situate, lying, and being in                      or in

one of them in the parish of H. in the county of W. between the lands formerly of T. L. Esq. the lands formerly of T. A. the lands formerly of R. M. and the lane or roadway leading from                      towards

and another lane there lying and being at the upper end of the said closes and pastures on or near all parts thereof. *And also* all other the lands, tenements, and hereditaments whatsoever, formerly of J. P. and E. his wife or one of them, and now of the said E. M. in which she hath any estate, right, title, or interest, either in possession, reversion, or remainder, situate, lying, and being in                      aforesaid in the said county of



W. with their and every of their appurtenances. *And also* all that parcel of arable land, containing by estimation two acres and an half formerly in the tenure, or occupation of T. G. and afterwards in the tenure or occupation of J. S. lying and being in the parish of B. in the said county of W. in a field there called Kay field, between the land of M. L. on the one part, and the land of G. K. on the other part, in breadth, and extending in length from the land formerly of T. F. and afterwards of J. W. at the one end, unto the land formerly of T. F. Esq. heretofore in the tenure or occupation of A. C. widow, and afterwards of S. B. at the other end. One other close or pasture called Kayfield Close, containing by estimation four acres formerly in the tenure of J. M. and afterwards of J. S. and being in the parish of B. and county of W. between the land formerly of R. L. and afterwards of W. S. and some other land heretofore in the tenure of A. C. and afterwards of W. S. on or nearly on all parts. All which said last mentioned lands and premises were lately in the occupation of the said J. S. and are the premises which were conveyed and assured to the said H. M. his heirs and assigns for ever, by certain indentures of lease and release bearing date respectively on or about the twenty-eighth and twenty-ninth of December, one thousand seven hundred and forty-four. And also all those two closes of ground and other lands, situate at  
and called *And also* all that piece or parcel of land containing about two acres and an half, now in the tenure or occupation of R. H. which said last mentioned lands were on

a division or inclosure of the common and waste lands within the said manor and parish of B. allotted to the owner or proprietor of the said lands next hereinbefore described, for and in respect of the same, and are now better known and described, as *All* those several closes of land situate at

in the parish of B. in the county of W: now or late in the tenure or occupation of J. T. *And* also all, &c. *And* all houses, outhouses, edifices, buildings, barns, stables, yards, gardens, orchards, closes of land, meadow and pasture, fieldings, woods, underwoods, and the ground and soil thereof, commons, and common of pasture, and of turbary and other commonable rights, hedges, ditches, fences, mounds, ways, paths, waters, water-courses, liberties, privileges, easements, profits, commodities, advantages, and emoluments whatsoever to the said messuages and other hereditaments hereby released, or otherwise assured or intended so to be, or any of them respectively, belonging or in any wise appertaining, or accepted, reputed, deemed, taken, known, held, occupied or enjoyed, as part, parcel, or member of the same, or any of them respectively. *And* all other the messuages, lands, tenements, and hereditaments, situate, lying, and being in the several towns, parishes, and places of T. H. B. B. in the counties of Warwick and Worcester, and each or either of them in which the said E. M. hath any estate tail at law or in equity, and every part and parcel with the same, with their and every of their rights, members, and appurtenances; *And* the reversion and reversions,

remainder and remainders, yearly, and other rents and profits of the said several messuages and hereditaments hereby released, or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances: *and* all the estate, right, title, interest, use, trust, inheritance, term, and terms for life or lives, property, possession, benefit, and equity of redemption, claim, and demand, whatsoever at law and in equity, or otherwise howsoever, of her the said E. M. of, in, to, and out of the messuages, hereditaments, and premises hereby released, or otherwise assured or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, *to have and to hold* the said messuages, hereditaments, and all and singular other the premises hereby released, or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, unto *and to the use of* the said A. B. and his assigns, for and during the *joint natural lives* of the said A. B. and E. M. To the intent that the said A. B. may be tenant of the freehold, of all and singular the said messuages, hereditaments, and premises, hereby released, or otherwise assured or intended so to be, and every part and parcel of the same with their rights, members, and appurtenances: to the end that two or more good and perfect common recoveries, with double voucher, may be had and suffered of the same messuages and hereditaments; and for that purpose it is hereby directed, declared, and

agreed by and between all the said parties to these presents, that the said A. B. shall permit and suffer the said C. D. or some other person or persons, at the costs and charges in all things of the said E. M. her heirs, executors, or administrators at any time or times hereafter to sue forth and prosecute, against him the said A. B., out of his Majesty's high court of Chancery, two or more writs of entry *sur disseisin'en le post*, returnable before his Majesty's justices of the court of Common Pleas at Westminster, and by one of the said writs, demand of the said A. B. the said messuages, hereditaments, and premises hereby released or otherwise assured or intended so to be, which are situate in the said county of Warwick, by the names and descriptions of two messuages, two gardens, 40 acres of land, 40 acres of meadow, and 40 acres of pasture, with the appurtenances in T. And by the other of the said writs, demand of the said A. B. the said messuages, hereditaments, and premises hereby released, or otherwise assured or intended so to be, which are situate in the said county of Worcester, with their, and every of their rights, members, and appurtenances, by the names and descriptions of \_\_\_\_\_ or by such other apt, good, sufficient, and proper names, number of messuages, and acres, quantities, qualities, and other descriptions as shall be deemed necessary, proper, sufficient, and requisite to comprise the same: and that the said A. B. shall in his own person, or by his attorney or attornies lawfully authorised in that behalf, appear to each of the same writs respectively, and vouch to warranty the said E. M.

and that the said E. M. shall in her own person, or by her attorney or attornies lawfully authorised in that behalf, appear gratis, and freely enter into the warranty of the said A. B. and, taking the same upon herself, vouch over to warranty the common vouchee of the court of Common Pleas, for the time being, who shall appear gratis, and freely enter into the warranty of the said A. B. and after imparlance make default, so that judgment may be given upon each of the said writs respectively for the said C. D. or other demandant or demandants, to recover all and singular the said messuages, hereditaments, and premises hereby released or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, by such quantities, qualities, and other descriptions as aforesaid, against the said A. B. and for the said A. B. to recover in value against the said E. M. and for the said E. M. to recover in value against the common vouchee, as is usual in such cases. And that upon all and every recovery and recoveries to be suffered as aforesaid, execution may be sued and prosecuted by, and seisin had, taken, and delivered unto C. D. or other demandant or demandants accordingly; and that every other act or thing requisite or proper to be done or executed, for the purpose of suffering and perfecting a common recovery or recoveries, of the messuages, hereditaments, and premises hereby released or otherwise assured, or intended so to be, with double, treble, or other voucher, to bar the estate or estates tail of the said E. M. of and in the same messuages, heredi-

taments, and premises, and all reversions and remainders over and expectant upon the same estate or estates tail, may be made, done, and executed. And by way of direction, and declaration, and not of covenant, it is hereby granted, declared, and agreed, by and between the parties to these presents, and they hereby, for themselves, severally and respectively, and for their several and respective heirs, executors, and administrators, and according to their respective estates, rights, and interests, in the premises, consent and agree that the recoveries hereby agreed to be suffered shall be suffered and perfected with all possible dispatch; and that they respectively, and their respective heirs, on their respective parts, will use their utmost endeavours to give effect to the same recoveries, and also to these presents, and the grant, release, confirmation, or other assurance hereby made. And it is hereby further directed, declared, and agreed by and between all the parties to these presents, as far as they respectively have any right, title, or interest in the premises, that immediately upon and after judgment obtained, and seisin had and taken, upon each such recovery as aforesaid, each recovery respectively so as aforesaid, or in any other manner, or at any other time or times, to be suffered, and also the bargain and sale for a year bearing date on the day next before the day of the date of these presents, and also these presents, and the assurance hereby made, and all and every other fine and fines, recovery and recoveries, and other assurances whatsoever, at any time or times heretofore, and to be at any time and from time to time hereafter, had, made,

done, levied, suffered, executed, and perfected of, or concerning all or any part of the said messuages, hereditaments and premises, hereby released, or otherwise assured, or intended so to be, either by themselves, solely and alone, or jointly and together with any other lands, tenements, or hereditaments, by or between all and every, or any or either of the persons, who are parties to these presents, or to which they, or any or either of them, is or are, or shall or may be parties or privies, or a party, or privy, shall, as to all the said parties to these presents, respectively, as far as they respectively can lawfully or rightfully direct the uses of the same, fine or fines, common recovery or recoveries, and other assurances, be and enure, and be adjudged, expounded, deemed, and taken to be and enure; and that the same was and were meant, and intended, and is and are hereby directed and declared to be and enure; and that the person or persons to whom such fine or fines, common recovery or recoveries, and other assurances respectively, have or hath been or shall or may be levied, suffered, made, and executed, shall stand and be seised, as, to, for, and concerning the said messuages and hereditaments hereby released, or otherwise assured or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances. *To the use of the said E. M. her heirs and assigns for ever; and to no other use, nor for any other end, intent, or purpose whatsoever. In witness, &c.*

## FORM II.

*Form of a Conveyance to be made previous to suffering a Recovery, or executing a Recovery Deed, by a Person, when it is doubtful whether he is Tenant for Life or in Tail; and when, if he is Tenant for Life, there is a contingent Remainder to one of his Sons. The Object being, to bar the Estate-tail, if any, and to protect the Estate for Life, if any, from the Consequences of Forfeiture; and preserve the contingent Remainders, if any, from Destruction.*

THIS INDENTURE, made the                      day  
of                      40 Geo. III. and in the year of  
our Lord 1801; between T. B. B. of, &c. gent.  
of the one part; and A. B.                      of  
of the other part; *Whereas*, the said T. B. B.  
is either tenant for life or in tail of all or some  
of the messuages, farms, lands, tenements, and  
hereditaments, hereinafter released or otherwise  
assured or intended so to be, and as to such parts  
thereof, if any, of which he is tenant for life,  
doubts are entertained whether there is a con-  
tingent remainder in favor of his eldest son for  
the time being, or some or one of his sons under  
or by virtue of the will of                      bearing date  
on or about the                      day of                      and  
proved in the court of                      on or about  
the                      day of                      *And whereas*  
the said T. B. B. is desirous and hath determined  
to suffer a common recovery of the said mes-  
suages, farms, lands, tenements, and heredita-



ments; and it is deemed expedient that prior to his execution of the necessary conveyance for making a tenant to the writ of entry, for suffering such recovery, he should convey the freehold of the said messuages, farms, lands, tenements, and hereditaments, so and in such manner that he may take back the immediate freehold for the joint lives of himself and A. B. with remainder to the said A. B. for the life of the said T. B. B. in trust for the said T. B. B. and his assigns during his life. *Now this indenture witnesseth*, that for the purposes hereinbefore expressed, and in consideration of 10s. of lawful money of the united kingdom of Great Britain and Ireland, current in Great Britain, to the said T. B. B. paid by the said A. B. immediately before the execution of these presents the receipt whereof is hereby acknowledged, the said T. B. B. hath granted, bargained, sold, aliened, released, and confirmed, and by these presents *doth* grant, bargain, sell, alien, release, and confirm unto the said A. B. his heirs and assigns, in the actual possession of the said A. B. now being in virtue of a bargain and sale thereof made to him by the said T. B. B. in consideration of 5s. paid to him by the said A. B. by indenture bearing date, on the day next before the day of the date and executed before the execution of these presents, for one whole year, to be computed from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute made for transferring uses into possession) all the messuages, farms, lands, tenements, and heredita-

ments of the said T. B. B. situate in the several parishes of \_\_\_\_\_ in the county of \_\_\_\_\_ and hereinafter particularly described, that is to say, *All*, &c.

*And* all houses, cottages, outhouses, edifices, buildings, barns, stables, yards, gardens, orchards, closes of land, meadow, and pasture feedings, woods, underwoods, and the ground and soil thereof, commons, and common of pasture, and of turbary, and other commonable rights, hedges, ditches, fences, mounds, ways, paths, waters, water-courses, liberties, privileges, easements, profits, commodities, advantages, and emoluments whatsoever, to the said messuages, farms, lands, tenements, and hereditaments, hereby released or otherwise assured, or intended so to be, or any of them respectively belonging, or in any wise appertaining or accepted, reputed, deemed, taken, known, held, occupied, or enjoyed, as part, parcel, or member of the same, or any of them respectively.

And the reversion and reversions, remainder and remainders yearly, and other rents and profits of the said messuages, farms, lands, tenements, and hereditaments, hereby released or otherwise assured or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances.

To have and to hold the said messuages, farms, lands, tenements, hereditaments, and all and singular other the premises hereby released or otherwise assured or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appur-

tenances unto the said A. B. and his heirs for and during the natural life of the said T. B. B. to the uses and upon the trusts hereinafter declared, that is to say, to the use of the said T. B. B. and his assigns during the joint natural lives of the said A. B. and T. B. B. and from and immediately after the determination of that estate, by forfeiture, surrender, or otherwise, then to the use of the said A. B. and his heirs for the natural life of the said T. B. B. in trust for the said T. B. B. and his assigns, and to no other use, and upon no other trust whatsoever. *In witness, &c.*

## FORM III.

*Form of Recovery Deed, to Uses, to prevent a Title of Dower suffered by the conveying Party in the last Form.*

THIS INDENTURE, of three parts, made the  
 day of                      41 Geo. III. and in the  
 year of our Lord 1801, Between T. B. B. of  
                                 gent. and P. his wife (*the intended*  
*wouchees*) of the first part; R. P. of the Inner Tem-  
 ple, London, Esq. the intended demandant, of  
 the second part; and C. D. of                      the intended  
 tenant of the third part, *witnesseth*, that for  
 docking, barring, and extinguishing, all estates  
 tail, reversions, and remainders, thereupon ex-  
 pectant and depending of and in the messuages,  
 farms, lands, tenements, and hereditaments herein  
 after released, or otherwise assured or intended so  
 to be; And, for extinguishing the dower, right, and  
 title of dower, of the said P. B. of and in the same  
 messuages, farms, lands, tenements, and heredita-  
 ments, and for conveying, limitting, and assuring  
 the same messuages, farms, lands, tenements, and  
 hereditaments, to the uses upon the trusts, and  
 for the ends, intents, and purposes herein after  
 limited, expressed, and declared, of and concerning  
 the same; and in consideration of 10s. of lawful  
 money of the united kingdom of Great Britain  
 and Ireland, current in Great Britain, to the  
 said T. B. B. and P. his wife, paid by the said

C. D., immediately before the execution of these presents, the receipt whereof is hereby acknowledged, the said T. B. B. and P. his wife, have, and each of them hath granted, bargained, sold, aliened, released, and confirmed, and by these presents do, and each of them doth grant, bargain, sell, alien, release, and confirm unto the said C. D. his heirs and assigns for ever (in the actual possession of the said C. D.) now being in virtue of a bargain and sale thereof, made to him by the said T. B. B. and P. his wife in consideration of 5s. paid to each of them by the said C. D. by indenture bearing date on the day next before the day of the date, and executed before the execution of these presents for one whole year, to be computed from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute made for transferring uses into possession, *all* the messuages, farms, lands, tenements, and hereditaments of the said T. B. B. situate in the several parishes of

in the county of \_\_\_\_\_ and hereinafter described, that is to say, all, &c. &c. AND all houses, cottages, outhouses, edifices, buildings, barns, stables, yards, gardens, orchards, closes of land, meadow and pasture, feedings, woods, underwoods, and the ground and soil thereof, commons and common of pasture, and of turbary, and other commonable rights, hedges, ditches, fences, mounds, ways, paths, waters, water-courses, liberties, privileges, easements, profits, commodities, advantages, and emoluments whatsoever, to the said messuages, farms, lands, tenements, and hereditaments, hereby released or

[B].

otherwise assured or intended so to be, or any of them respectively, belonging or in any wise appertaining or accepted, reputed, deemed, taken, known, held, occupied, or enjoyed as part, parcel, or member of the same, or any of them respectively, and the reversion and reversions, remainder and remainders, yearly and other rents and profits of the said messuages, farms, lands, tenements, and hereditaments, hereby released or otherwise assured or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, and all the estate, right, title, interest, use, trust, inheritance, term and terms for life or lives, property, possession, benefit, and equity of redemption, claim, and demand whatsoever at law and in equity, or otherwise howsoever, of the said T. B. B. and dower and right, and title of dower of the said P. his wife, of, into, and out of the same messuages, farms, lands, tenements, and hereditaments, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, *to have and to hold* the said messuages, farms, lands, tenements, and hereditaments, and all and singular other the premises hereby released, or otherwise assured or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, unto the said C. D. his heirs and assigns for ever, to the only proper use and behoof of the said C. D. his heirs and assigns for ever, *to the intent* that the said C. D. may be tenant of the freehold of all and singular the said messuages, farms, lands, tenements, and hereditaments, hereby released or otherwise as-

ured, or intended so to be, and every part and parcel of the same, with their rights, members, and appurtenances, *to the end* that one or more good and perfect common recovery or recoveries, with double voucher, may be had and suffered of the same hereditaments; and for that purpose it is hereby directed, declared, and agreed by and between all the said parties to these presents, that the said C. D. shall permit and suffer the said R. P. or some other person or persons, at the costs and charges in all things of the said T. B. B. his heirs, executors, or administrators, at any time or times hereafter, to sue forth and prosecute against the said C. D. out of his majesty's high court of Chancery one or more writ or writs of entry *sur disseisin en le post*, returnable before his majesty's justices of the court of Common Pleas at Westminster, and thereby demand of the said C. D. the messuages, farms, lands, tenements, and hereditaments hereby released, or otherwise assured or intended so to be, with their and every of their rights, members, and appurtenances, by the names, and descriptions of (*as in the writ of entry*) or by such other apt, good, sufficient, and proper names, number of messuages, and acres, quantities, qualities, and other descriptions as shall be deemed necessary, proper, sufficient, and requisite to comprise the same; and that the said C. D. shall in his own person, or by his attorney or attorneys, lawfully authorized in that behalf, appear to the same writ or writs, and vouch to warranty the said T. B. B. and P. his wife; and that the said T. B. B. and P. his wife, shall in their own persons, or by their attorney or attorneys

lawfully authorized in that behalf, appear gratis, and freely enter into the warranty of the said C. D. and taking the same upon themselves vouch over to warranty the common vouchee of the said court of Common Pleas for the time being, who shall appear gratis, and freely enter into the warranty of the said T. B. B. and P. his wife, and after imparlance make default, so that judgment may be given upon the said writ or writs, and every of them, for the said R. P. or other demandant or demandants, to recover all and singular the said messuages, farms, lands, tenements, and hereditaments hereby released or otherwise assured or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, by such names, quantities, qualities, and other descriptions as aforesaid, against the said C. D., and for the said C. D. to recover in value against the said T. B. B. and P. his wife, and for the said T. B. B. and P. his wife to recover in value against the common vouchee, as is usual in such cases, and that upon all and every recovery and recoveries to be suffered as aforesaid, execution may be sued and prosecuted by, and seisin had, taken, and delivered unto the said R. P. or other demandant or demandants accordingly, and that every other act or thing needful, requisite, or proper to be done and executed for the purpose of suffering and perfecting a common recovery or recoveries of the said messuages, farms, lands, tenements, and hereditaments hereby released or otherwise assured or intended so to be, with double, treble, or other voucher to bar the estate-tail of the said T. B. B. of and in the same mes-



suages, farms, lands, tenements, and hereditaments, and all reversions and remainders over and expectant upon the same estate-tail, and to extinguish the dower, right, and title of dower of the said P. B. may be made, done, and executed. *And* by way of direction and declaration, and not of covenant, it is hereby granted, declared, and agreed by and between the said parties to these presents, and they hereby for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, and according to their respective estates, rights, and interests in the premises, consent and agree that the recovery hereby agreed to be suffered shall be suffered and perfected with all possible dispatch; and that they respectively, and their respective heirs, on their respective parts, will use their utmost endeavours to give effect to the same recovery and also to these presents, and the grant, release, confirmation, or other assurance hereby made. And it is hereby further directed, declared, and agreed by and between all the parties to these presents, as far as they respectively have any right, title, or interest in the premises, that immediately upon and after judgment obtained and seisin had and taken upon such recovery as aforesaid, the same recovery and also these presents, and the assurance hereby made, and all and every fine and fines, recovery and recoveries, and other assurances whatsoever at any time or times heretofore, and to be at any time, and from time to time hereafter, had, made, done, levied, suffered, executed, and perfected, of or concerning all or any part of the said messuages, farms, lands, &c.

nements, and hereditaments hereby released or otherwise assured or intended so to be, either by themselves solely and alone, or jointly and together with any other lands, tenements, or hereditaments, by or between all and every, or any or either of the persons who are parties to these presents, or to which they, or any or either of them is, or are, or shall, or may be parties or privies, or a party or privy, shall, as to all the said parties to these presents respectively, as far as they respectively can lawfully or rightfully direct the uses of the same fine and fines, common recovery and recoveries, and other assurances, be and enure, and be adjudged, expounded, deemed, decreed, and taken to be and enure, and that the same was and were meant and intended, and is and are hereby directed and declared to be and enure; and also that the person or persons to whom the said fine or fines, common recovery or recoveries, and other assurances respectively, have or hath been, or shall or may be levied, suffered, made, and executed, shall stand and be seised, *as*, to, for, and concerning the said messuages, farms, lands, tenements, and hereditaments hereby released or otherwise assured or intended so to be, and every part and parcel of the same, with their and every of their rights, members; and appurtenances, *to the uses*, upon the trusts, and for the ends, intents, and purposes hereinafter limited, expressed, and declared of and concerning the same, (that is to say) *to the use* of such person or persons for such estate or estates and for such interest or interests, by way of legacy, annuity, rent-

charge, or otherwise, and in such parts, shares, and proportions, and upon such trusts, and for such ends, intents, and purposes, and charged and chargeable in such manner, and either absolutely or conditionally, and subject to such powers of revocation and of new appointment and other powers, provisoes, conditions, restrictions, limitations, declarations, and agreements, as the said T. B. B. at any time or times, and from time to time by any deed or deeds, instrument or instruments, in writing, to be sealed and delivered by him in the presence of and attested by two or more credible witnesses, shall direct, limit, or appoint. *And* in default of such direction, limitation, and appointment, and in the mean time, and from time to time until the same shall take effect, and from time to time subject to such uses, estates, trusts, charges, and interests as shall have been directed, limited, or appointed by the said T. B. B. *Then to the use* of the said T. B. B. and his assigns for and during the term of his natural life. And from and after the determination of that estate by any means in his life-time, *To the use* of the said R. P. his heirs and assigns, during the natural life of the said T. B. B. *upon trust* for and for the sole benefit of the said T. B. B. and his assigns, and to the intent that the present or any future wife of the said T. B. B. may not be entitled to dower. *And* from and after the determination of the estate hereby limited to the use of the said R. P. his heirs and assigns, for the life of the said T. B. B., *Then to the use* of the said T. B. B. his heirs and assigns for ever. And to, for, and upon no other use, trust, intent, or purpose whatsoever. *In witness, &c.*

## FORM IV.

*Release in Fee of Lands, partly Freehold and partly of the Tenure of ancient Demesne, that Common Recoveries may be suffered thereof to Uses : and a Release of Right.*

THIS INDENTURE, of six parts, made the day of        in the forty-fifth year of the reign, &c. &c. and in the year of our Lord 1805 ; between J. R. H. of, &c. yeoman, of the first part ; W. B. of, &c. gentleman, of the second part ; C. C. of, &c. gentleman, and A. his wife (late A. H. spinster) of the third part ; J. S. of, &c. gentleman, of the fourth part ; T. S. of, &c. of the fifth part ; and J. E. of, &c. Esq. of the sixth part. *Whereas* by indentures of lease and release bearing date respectively on or about the 1st and 2d days of September in the year 1727, the indenture of release being tripartite and made, or expressed to be made, between J. N. and M. his wife, of the first part ; W. C. and J. H. of the second part ; and J. N. the younger and M. his wife of the third part, being a settlement made in consideration of the marriage between the said J. N. the younger and M. his wife, the messuage or tenement and hereditaments hereinafter described to be called        and situate in H. in the parish of O. in the county of S. were conveyed, settled, and assured from and after the decease of the survivor of the said J. N. the younger and M. his wife,

(both of whom long since departed this life). To the use of the first son of the body of the said J. N. the younger on the body of the said M. his wife begotten or to be begotten in tail general, with divers remainders over. *And whereas* J. N. was the eldest son of the said J. N. and M. his wife. *And whereas* the said J. N. being seised as tenant in tail of the said messuage or tenement and hereditaments, situate in H. and being also seised to him and his heirs in fee-simple of a messuage or tenement and hereditaments with the appurtenances, called otherwise

farm, as the devisee in fee thereof named in the will of W. D. his grandfather: and being also seised to him and his heirs in fee-simple of another messuage, farm, lands, and hereditaments called otherwise

farm, did by his last will and testament in writing, duly executed and attested for the devise of lands of inheritance, and bearing date on or about the 16th day of December in the year 1760, give and devise his said messuage or tenement, farm, lands, and premises, situate in H. aforesaid, and now called otherwise

(charged with an annuity of £ to his wife, who is since deceased, for her life) as soon as his daughter M. should attain the age of twenty-one years, unto his said daughter and her assigns for her life; and from and after the decease of his said daughter, he gave and devised the same unto the heirs of her body, lawfully issuing. But in case the said daughter should not live to attain the age of twenty-one years, or leave issue of her body lawfully begotten, then the said testator devised

his said messuages, lands, and hereditaments at H. in manner therein mentioned. And the said J. N. by his said will also gave and devised all that his messuage or tenement, farm, lands, and premises in H. aforesaid called or known by the name of                      when and as soon as his said daughter M. should attain her age of twenty-one years, unto his said daughter, her heirs and assigns for ever. But in case his said daughter should not live to attain the age of twenty-one years, or leave issue of her body lawfully begotten, then he devised the same messuage or tenement, farm, lands, and premises last mentioned in manner in the said will expressed. *And whereas* the said J. N. departed this life on or about the                      day of                      in the year of our Lord                      without having in any manner altered or revoked his said will, leaving his said daughter M. his only child and heir at law. And the said in part recited will of the said J. N. was, after his decease, and on or about the 6th day of July, duly proved in the Consistory Court of the Lord Bishop of W. at W. *And whereas* the said M. the daughter of the said J. N. intermarried with D. H. *And whereas* by indenture bearing date on or about the 29th day of December, in the year 1781, and made or expressed to be made between the said D. H. and the said M. then the wife of the said D. H. of the one part, and W. B. of the other part; and by a fine *sur connuissance de droit come ceo*, &c. levied in pursuance of an agreement contained in that indenture in the court of ancient demesne of the manor and hundred of O. of which the said messuages, farms, lands, and hereditaments called                      are

hoken, *All* those three several messuages or tenements, farms, lands, and hereditaments hereinafter described, to be called by the names of with the appurtenances, were or were expressed or intended to be settled and assured to the use of the said W. B. and D. H. their heirs and assigns, nevertheless, as to the estate and interest of the said W.B. and his heirs, of and in the said hereditaments and premises, in trust for the said D. H. his heirs and assigns. But as a fine levied in the court of ancient demesne is not a fine within the statutes under which proclamations are made, such fine was not an effectual bar to the said estates tail. *And whereas* J. H. formerly of, &c. surgeon, by his last will and testament in writing duly executed and attested, for the devise of lands of inheritance, and bearing date on or about the 18th day of June 1782 (amongst other things) gave and bequeathed unto his son the said D. H. all his (the said testator's) lands and premises, held by copy of court roll in C. including the tenements then inhabited by S. H. and E. and his house and land in D. likewise the house inhabited by F. J. *And whereas* the said J. H. departed this life on or about the day of 1782, without having in any manner altered or revoked his said will, leaving T.H. his eldest son and heir at law. And the same will was, after the death of the said J. H. and on or about the seventh day of March, in the year of our Lord 1791, proved in the court of *And whereas* at a court held for the manor and hundred of C. aforesaid, on or about the 28th day of October, in the year 1782, the said D.H. as the son and devisee of the said J. H. was admitted tenant to

the several lands, tenements, and hereditaments, late of the said J. H. holden of the said manor and hundred of C. by copy of court roll. *To hold* to him and his heirs for ever, according to the form and effect of the said will, and according to the custom of the manor and hundred of C. And at the same court, the said D. H. surrendered all the same lands, tenements, and hereditaments, to the use of such person or persons as he in and by his last will and testament should give, devise, direct, limit, and appoint. *And whereas* in the devise contained in the said in part recited will of the said J. H. of his said lands held by copy of court roll and other hereditaments, to his said son D. H. no words of inheritance were used, and it is apprehended that the said D. H. took only an estate for life in the said lands and hereditaments under that devise. *And whereas* the said D. H. was possessed of or otherwise well entitled to the piece or parcel of ground, with the dwelling-house, edifices, and buildings thereon erected, situate and lying in the parish of C. aforesaid, hereinafter described and assigned, or otherwise assured or intended so to be, with the appurtenances, for the residue of a certain term of five hundred years therein created, by indenture, bearing date on or about the 10th day of March in the year 1745. *And whereas* the said D. H. by his last will and testament in writing duly executed and attested for the devise of lands of inheritance, and bearing date on or about the 16th day of December in the year 1784, gave and devised unto his daughter H. her heirs and assigns for ever, all that his copyhold messuage or tenement, buildings and hereditaments,



then in the occupation of J. D. and himself, situate and lying in D—street, in C. aforesaid called or known by the name of H. being all or part of the said copyhold hereditaments, which were devised to him the said D. H. as aforesaid. And he desired that the lords of the manor of C. aforesaid, or their steward, would admit his wife and his brother-in-law J. M. as guardians of his said daughter H. during her minority. And the said testator also gave and devised unto his daughter A. her heirs and assigns for ever, all those his freehold messuages, lands, tenements, and hereditaments, with their appurtenances, situate in in C. in the occupation of W. C. labourer, and in in C. aforesaid, in the occupation of F. G. labourer; And also all those his ten copyhold tenements, with the buildings, gardens, and appurtenances thereunto belonging, situate and lying in C. aforesaid, and then in the occupation of S. C. and others. *To hold* to his said daughter A. her heirs and assigns for ever. And the said testator desired that the lords of the manor of C. or their steward, would admit his said wife and his said brother-in-law J. M. as guardians of his said daughter A. during her minority. And the said testator gave and devised unto his son and his heirs, *all* those his three several freehold farms with the messuages, buildings, lands, hereditaments, and appurtenances thereto belonging, situate and lying at H. in the parish of O. then in the occupation of himself and H. C. respectively, with the stock, rights, members, and appurtenances thereto belonging, (subject to certain annuities to the said testator's wife) But in an event which happened,

namely, in case his said son should happen to depart this life before his attainment of the age of twenty-one years, without leaving any lawful issue of his body then living, the said testator gave and devised *all* his said freehold farms, lands, hereditaments, and premises situate at H. aforesaid unto his said daughter H. her heirs and assigns, subject to a further annuity to his said wife. And if all his said children should happen to depart this life during their minorities without leaving any lawful issue of their, his, or her bodies or body then living, then the said testator gave, devised, and bequeathed all and every his real and personal estates whatsoever and wheresoever (subject as aforesaid), unto his nephews, the said J. R. H. and to J. M. the younger, and F. T. their heirs, executors, administrators, and assigns, for ever, equally to be divided between them, share and share alike, they paying thereout certain annuities thereby given to his said wife. And the said testator appointed his wife M. and his brother T. H. and his brother-in-law J. M. executors in trust of his will and guardians of all his said children. And whereas the said D. H. by a codicil to his said will, duly executed and attested, for the devise of lands of inheritance, and bearing date on or about the 12th day of May, in the year 1785, in case his said daughters H. H. and A. H. and his son J. N. H. and all and every of them, should happen to depart this life without leaving any lawful issue of their, her, or his bodies or body then living, gave, devised, and bequeathed the whole of his estate and effects both real and personal, of what tenure, nature, or kind soever, unto

his said nephews I. R. H. J. M. the younger, and F. T. their heirs, executors, administrators, and assigns for ever, to be equally divided between them, share and share alike, and they to take as tenants in common, and not as joint-tenants, subject to the several payments in his said will expressed, and to all other incumbrances and payments. *And whereas* the said D. H. departed this life on or about the                      day of                      without having in any manner altered or revoked his said will otherwise than by the said codicil thereto, and without having altered or revoked that codicil, leaving his said daughters H. H. and A. H. and his son the said J. N. H. him surviving; *And* the said in part recited will and codicil were afterwards, and on or about the day of                      duly proved in the                      court of                      ; *And whereas* by indentures of lease and release bearing date respectively on or about the 28th and 29th days of September, in the year 1786, and made or expressed to be made between the said T. H. of the one part, and the said M. H. and J. M. and which said M. H. J. M. and T. H. are therein described to be executors in trust named in the said will of the said D. H. of the other part. *It is witnessed*, that in consideration of £                      to the said T. H. paid by the said M. H. and J. M. being part of the trust monies arising under the will of the said D. H. the two messuages or tenements hereinafter described and released or intended so to be, and hereinafter mentioned to have been purchased of and from the said T. H. with the appurtenances, were conveyed and assured by the

said T. H. unto the said M. H. and J. M. In trust for and to the use of the said J. N. H. H. and A. H. the infant children of the said D. H. their heirs and assigns for ever. *And whereas* by indenture of assignment bearing date on or about the 29th day of September, in the year 1786, and made or expressed to be made between the said T. H. of the one part, and the said M. H. and J. M. (and which said T. H. M. H. and J. M. are therein described in like manner as in the last in part recited indentures) of the other part; the four pieces or parcels of land hereinafter described and assigned, or otherwise assured or intended so to be, with the appurtenances, were, for the considerations therein mentioned, assigned by the said T. H. unto the said M. H. and J. M. their executors, administrators, and assigns, for the residue of two several terms of one thousand years, and one thousand years therein, in trust for the said J. N. H. H. and A. H. their respective executors, administrators, and assigns, subject to the rents and covenants in the original indentures of demise contained. *And whereas* by indenture of feoffment, bearing date on or about the 16th day of March, in the year 1787, and made or expressed to be made between H. L. of the one part, and the said J. M. of the other part, and by livery of seisin made according to the form and effect of the same indenture, the messuage or tenement and hereditaments hereinafter mentioned to have been purchased of and from the said H. L. and hereinafter released, or otherwise assured or intended so to be, with the appurtenances, were, in consideration of £ paid by the said J. M. to the said

H. L. granted, enfeoffed, and conveyed by the said H. L. unto and to the use of the said J. M. his heirs and assigns for ever. *And whereas* by a certain deed poll or memorandum indorsed on the last in part recited indenture, and being under the hand and seal of the said J. M. and bearing date on or about the 14th day of July in the year 1791, after reciting that the sum of £ paid to the said H. L. by the said J. M. was not the proper monies of the said J. M. and that the same was part of the residue of the personal estate and effects of the said D. H. and by him given and bequeathed as aforesaid, the said J. M. in consideration of the premises, did declare and agree, that the same messuage, hereditaments, and premises, were granted and conveyed to, and his name used only, in trust with them the said T. H. and M. H. for such uses, intents, and purposes, as were mentioned, expressed, and declared in the said will of the said D. H. of and concerning other the messuages, hereditaments, and premises, in the said will mentioned. And he did thereby declare and agree, that the said messuage, hereditaments, and premises should at all times thereafter remain, continue, and be to the same uses, upon the same trusts, and for the same ends, intents, and purposes as other the messuages or tenements, hereditaments and premises, late of the said D. H. were subject and liable to under and by virtue of his said will, freed and absolutely discharged from all manner of incumbrances, made, done, or suffered, or thereafter to be made, done, or suffered by him the said J. M. his heirs, executors, administrators, or assigns. *And whereas* the said J. N. H. departed this life on or about

the 16th day of August in the year 1791, under the age of twenty-one years and without leaving any issue of his body lawfully begotten. *And whereas* the said H. H. departed this life on or about the 27th day of March, 1792, under the age of twenty-one years, and without leaving any issue of her body lawfully begotten. *And whereas* the said A. H. attained the age of twenty-one years on or about the 3d day of December, in the year of our Lord 1803, and on or about the 7th day of May in the year 1805 intermarried with the said C. C. her husband. *And whereas* the said T. H. departed this life on or about the                      day of                      in the year of our Lord, 1805. And the said J. R. H. is the eldest son and heir at law and customary heir of the said T. H. and as such is the customary heir of the said J. H. *And whereas* the said J. R. H. hath elected to take the said several copyhold and other hereditaments, which under the devise in the said in part recited will of the said J. H. passed to the said D. H. for his life only, and to which the said J. R. H. is now become entitled as the heir at law of the said J. H. as aforesaid, and to disclaim and release all his estate, right, title, and interest in and to the share to which he is entitled, subject to such contingency as aforesaid under the will of the said D. H. of and in the other real estates, late of the said D. H. and which have been purchased by and out of his personal estate since his decease as aforesaid, and also of and in the residue of the personal estate late of the said D. H. and hath agreed to release his share, estate, and interest, of, in, and to all other the real and personal estates, late of the said D. H.

unto the said A. C. her heirs, executors, administrators, and assigns, or in such manner as she shall direct or appoint. *And whereas* the said C. C. and A. his wife are desirous of suffering a common recovery of the several messuages, farms, lands, and hereditaments hereinafter described and released, or otherwise assured or intended so to be, called by the respective names of otherwise and otherwise with the appurtenances in the court of ancient demesne, whereof the same are holden, and a recovery of the other messuages, lands, and hereditaments hereinafter described and released, or otherwise assured or intended so to be, (not being of that tenure) in his majesty's court of Common Pleas, at Westminster, and of settling the same messuages, farms, lands, tenements, and hereditaments respectively, as far as they are interested therein, *To the uses* hereinafter expressed and declared of and concerning the same hereditaments respectively. And the said J. R. H. hath at their request agreed to join in the conveyance of the several messuages, farms, lands, tenements, and hereditaments, respectively, for the purpose of releasing and extinguishing *All* his estate, share, and interest therein, and also to assign and release unto the said C. C. and A. his wife all his share and interest in the personal estate, late of the said D. H. in such manner as is hereinafter contained. And the said W. B. hath also agreed to join in these presents for the purpose of transferring, all the estate (if any) in the said lands of the tenure of ancient demesne, and comprised in the said fine which are now vested in him. *Now*

*this indenture witnesseth, that for docking, barring, and destroying all estates-tail of and in the several messuages, farms, lands, and hereditaments hereinafter described and hereby released or otherwise assured or intended so to be; and all reversions and remainders expectant or depending on the same estates-tail, and all conditions and collateral limitations annexed thereto, and for settling and assuring the same messuages, farms, lands, and hereditaments respectively, To the uses hereinafter limited and declared of and concerning the same, and for giving effect to such election of the said J. R. H. as hereinbefore recited, And also in consideration of ten shillings of lawful money current in Great Britain to each of them the said J. R. H. W. B. C. C. and A. his wife well and truly paid by the said J. S. immediately before the execution of these presents, the receipt whereof is hereby acknowledged, the said J. R. H. and W. B. (at the request and by the direction and appointment of the said C. C. and A. his wife testified by their respective executions of these presents), and also the said C. C. and A. his wife according to their respective shares, estates, rights, and interests in the premises; but no further or otherwise, have, and each and every of them hath, bargained, sold, and released, and by these presents do, and each and every of them doth bargain, sell, and release unto the said, J. S. his heirs and assigns,) in the actual possession of the said J. S. now being in virtue of a bargain and sale thereof made to him by the said J. R. H. W. B. C. C. and A. his wife in consideration of five shillings paid to each of them by the said J. S. by indenture bearing date on the*



day next before the day of the date, and executed before the execution of these presents, for one whole year, to be computed from the day next before the day of the date of the same indenture of bargain and sale, (and by force of the statute made for transferring uses into possession), *All, &c.* [here the parcels were inserted.] *And all houses, cottages, outhouses, edifices, buildings, barns, stables, yards, gardens, orchards, closes of land, meadow and pasture feedings, woods, underwoods, and the ground and soil thereof, commons, and common of pasture and of turbary, and other commonable rights, hedges, ditches, fences, mounds, ways, paths, waters, water-courses, liberties, privileges, easements, profits, commodities, advantages, and emoluments, whatsoever, to the said messuages, farms, lands, and hereditaments hereby released, or otherwise assured or intended so to be, or any of them respectively belonging or in any wise appertaining or accepted, reputed, deemed, taken, known, held, occupied, or enjoyed, as part, parcel, or member of the same, or any of them respectively. And the reversion and reversions, remainder and remainders yearly and other rents and profits of the said messuages, farms, lands, hereditaments, and premises hereby released or otherwise assured or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances. And all the estate, right, title, interest, use, trust, inheritance, term, and terms for life of lives, property, possession, possibility, benefit, and equity of redemption, claim, and demand, whatsoever, at law and in equity, or otherwise howsoever, of them, the said J. R. H.*

W. B. and C. C. and A. his wife, and of each and every of them, of, in, to, and out of the said messuages, farms, lands, hereditaments, and premises hereby released, or otherwise assured or intended so to be and every part and parcel of the same, with their and every of their rights, members, and appurtenances, *To have and to hold* the said messuages, farms, lands, hereditaments, and all and singular other the premises hereby released or otherwise assured or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, unto the said J. S. his heirs and assigns, discharged of and from all estate right, title, and interest, of the said J. R. H. in or to the same messuages, farms, lands, tenements, and hereditaments, or any of them, or any part or share thereof, but subject and without prejudice to any right, title, or interest which the said J. M. and J. T. and each or either of them can or may have or claim under or by virtue of the last will and testament of the said D. H. nevertheless, to the uses, and for the ends, intents, and purposes, hereinafter expressed and declared (that is to say) as to, for, and concerning such, and so many, and such part and parts, of the said messuages, farms, lands, hereditaments, and premises hereby released, or otherwise assured or intended so to be, as are within the jurisdiction of the court of ancient demesne of the manor and hundred of O. aforesaid, with the appurtenances, *To the use* of the said J. S. his heirs and assigns, for ever, and as to, for, and concerning all other the messuages, farms, lands, hereditaments, and premises hereby released or otherwise assured or intended so,

to be, with the appurtenances, not being within the jurisdiction of the said court of ancient demesne, *To the use* of the said T. S. his heirs and assigns, *To the intent* that the said J. S. and T. S. respectively may be tenants of the freehold of all and singular the messuages, farms, lands, hereditaments, and premises hereby limited in use to them the said J. S. and T. S. respectively, and every part and parcel of the same respectively with their respective rights, members, and appurtenances, to the end that two or more good and perfect common recoveries, with double voucher, may be had and suffered of the same lands and hereditament, respectively; and for that purpose, it is hereby directed, declared, and agreed, by and between all the said parties to these presents, that the said J. S. shall permit and suffer the said J. E. or some other person or persons, at the costs and charges in all things of the said C. C. his heirs, executors, or administrators, at any time or times hereafter, to sue forth and prosecute against him the said J. S. out of his majesty's high court of Chancery one or more writ or writs of right close directed to the \_\_\_\_\_ of the said manor and hundred of O, and to be duly returned, and make protestation to prosecute the same writ in nature of a writ of entry, *sur disseisin en le post* and thereby demand of the said J. S. such and so many and such part and parts of the several messuages, farms, lands, hereditaments, and premises hereby released or otherwise assured or intended so to be, as are within the jurisdiction of the said court of ancient demesne, and hereby limited in use to the said J. S. with their and every of their rights, members, and appurtenances, by such act,

good, sufficient, and proper names, number of messuages and acres, quantities, qualities, and other descriptions as shall be deemed necessary, proper, sufficient, and requisite to comprise the same; and the said T. S. shall permit and suffer the said J. E. or some other person or persons, at the costs and charges, in all things of the said C. C. his heirs, executors or administrators, at any time or times hereafter to sue forth and prosecute against him the said T. S. out of his majesty's high court of Chancery one or more writ or writs, of entry, *sur disseisin en le post*, returnable before his majesty's justices of the court of Common Pleas at Westminster, and thereby demand of the said T. S. such and so many, and such part and parts, of the messuages, farms, lands, hereditaments, and premises hereby released, or otherwise assured or intended so to be as are not of the tenure of ancient demesne, and as are hereby limited in use to the said T. S. with their appurtenances, by such good, sufficient, and proper names, number of messuages, and acres, quantities, qualities, and other descriptions, as shall be deemed necessary, proper, sufficient, and requisite to comprise the same; and that the said J. S. and T. S. respectively shall in their own persons, or by their attorney or attorneys, lawfully authorised in that behalf, appear to the same writs respectively, and vouch to warranty the said C. C. and A. his wife; and that the said C. C. and A. his wife shall in their own persons, or by their attorney or attorneys lawfully authorised in that behalf, appear gratis and freely enter into the warranty of the said J. S. and T. S. respectively, and taking the same upon themselves, vouch over to warren-

ty, the common vouches for the time being of the said courts of ancient demesne and Common Pleas respectively, who shall appear gratis, and freely enter into the warranty of the said C. C. and A. his wife, and after imparlance make default, so that judgment may be given upon the said writs respectively, and every of them for the said J. E. or other demandant or demandants therein respectively, to recover all and singular the said messuages, farms, lands, hereditaments, and premises hereby released, or otherwise assured or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, by such names, qualities, quantities, and other descriptions as aforesaid, against the said J.S. and T. S. respectively, and for them respectively to recover in value, against the said C.C. and A. his wife, and for the said C. C. and A. his wife to recover in value against the common vouches, as is usual in such cases, and that upon all and every recovery and recoveries, to be suffered as aforesaid, execution may be sued and prosecuted by and seisin had, taken, and delivered unto the said J. E. or other demandant or demandants accordingly ; and that every other act or thing requisite or proper to be done or executed for the purpose of suffering and perfecting two or more common recoveries of the several messuages, farms, lands, hereditaments, and premises respectively hereby released or otherwise assured or intended so to be, with double, treble, or other voucher, to dock the estates-tail of the said A. C. of and in the said several messuages, farms, lands, hereditaments,

and premises, and all reversions and remainders over and expectant upon the same estates-tail, and to transfer and settle the same messuages, farms, lands, and hereditaments to the uses hereinafter limited, expressed, and declared thereof, may be made, done, and executed. And by way of direction and declaration, and not of covenant, it is hereby granted, declared, and agreed, by and between the parties to these presents, and they hereby for themselves, severally and respectively, and for their several and respective heirs, executors, and administrators, consent and agree, according to their respective estates, rights and interests, in the premises, that the recoveries hereby agreed to be suffered, shall be suffered and perfected with all possible dispatch, and that they respectively and their respective heirs, on their respective parts, will use their utmost endeavours, to give effect to the same recoveries, and also to these presents, and the grant, release, confirmation, or other assurance hereby made. And it is hereby further directed, declared, and agreed, by and between all the parties to these presents, as far as they respectively have any right, title, or interest in the premises, that immediately upon and after judgment obtained, and seisin had and taken upon each of such recoveries as aforesaid, each of the recoveries respectively, so as aforesaid, or in any other manner, or at any other time or times, to be suffered, and also the bargain and sale for a year, bearing date on the day next before the day of the date of these presents, and also these presents, and the assurance hereby made, and all and every other fine and fines, recovery and recoveries, and other assurances whatsoever,

at any time or times heretofore, and to be at anytime, and from time to time hereafter had, made, done, levied, suffered, and perfected, of or concerning all or any part of the said messuages, farms, lands, hereditaments, and premises, hereby released, or otherwise assured or intended so to be, either by themselves, solely and alone, or jointly and together, with any other lands, tenements, or hereditaments whatsoever, by or between all and every, or any or either of the persons who are parties to these presents, or to which they or any or either of them is or are, or shall or may be parties or privies, or a party or privy, shall, as to all the said parties to these presents respectively, as far as they respectively can lawfully or rightfully direct the uses of the same fine or fines, common recovery and recoveries, and other assurances, be and enure, and be adjudged, expounded, deemed, decreed, and taken to be and enure, and that the same was and were meant and intended, and is and are hereby directed and declared to be and enure, and also that the person or persons to whom such fine or fines, common recovery or recoveries, and other assurances, respectively have or hath been or shall or may be levied, suffered, made, and executed, shall stand and be seised, *as, to, for, and concerning* the said messuages, farms, lands, hereditaments, and premises, hereby released, or otherwise assured or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, subject, and without prejudice as aforesaid *To the uses*, upon the trusts, and for the ends, intents, and purposes, hereinafter limited and declared of and concern-

ing the same, that is to say, *To the use* of such person or persons, for such estate or estates, and for such interest or interests, by way of annuity, rent charge, or otherwise, and in such parts, shares, and proportions, and upon such trusts, and for such ends, intents, and purposes, and charged and chargeable, in such manner, and either absolutely or conditionally, and subject to such powers of revocation and of new appointment and other powers, provisoes, conditions, restrictions, limitations, declarations, and agreements, as the said C. C. and A. his wife, at any time or times, and from time to time, during their joint lives, by any deed or deeds, instrument or instruments, in writing, to be sealed, and delivered by them in the presence of two or more credible witnesses, and attested by the same witnesses, shall jointly direct, limit, or appoint, and in default of such direction, limitation, and appointment, and in the mean time, and from time to time, until the same shall take effect, and from time to time subject to such uses, trusts, charges, and interests as shall have been directed, limited, or appointed by the said C. C. and A. his wife jointly; *then to the use* of the said C. C. and A. his wife, their heirs and assigns, for ever, and to no other use whatsoever, and upon no other trust, nor for any other end, intent, or purpose whatsoever. *And this indenture also witnesseth* that in pursuance and further performance of the said agreement on the part of the said J. R. H. and in consideration of 10s. of like lawful money as aforesaid, to the said J. R. H. well and truly paid by the said C. C. and A. his wife, immediately before the execution of these presents, the receipt where-



of is hereby acknowledged, the said J. R. H. hath remised, released, quit claimed, and also bargained, sold, and assigned, and by these presents doth remise, release, quit claim, and also bargain, sell, and assign unto the said C. C. and A. his wife, their heirs, executors, administrators, and assigns, all the estate, right, title, interest, term and terms of years, benefit, property, and possibility, at law and in equity, or otherwise howsoever, of him the said J. R. H. of, in, to, and out of all the said freehold and leasehold messuages, lands, tenements, hereditaments, real estate, and residue of the personal estate and effects, and other property late of the said D. H. devised and bequeathed by his said will and codicil, or which were purchased in manner hereinbefore mentioned, and of, into, and out of every part and parcel of the same, so and in such manner, that the said J. R. H. may henceforth be excluded of and from all share, right, and interest, of, in, and to the same real and personal estates, and the same may be discharged of and from all claims and demands whatsoever, of him the said J. R. H. And the said W. B. doth hereby for himself, his heirs, executors, and administrators, covenant, declare, and agree, to and with the said C. C. and A. his wife, their heirs, and assigns, that he the said W. B. hath not at any time or times heretofore made, done, executed, committed, or willingly or knowingly suffered any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the said messuages, farms, lands, tenements, and hereditaments, hereby released, or otherwise assured or intended so to be, or any part thereof, are, is, can,

shall, or may be impeached, charged, incumbered, or in any wise affected in title, charge, estate, or otherwise howsoever. *And* the said J. R. H. doth by these presents, for himself, his heirs, executors, and administrators, covenant and declare to and with the said C. C. and A. his wife; their heirs, executors, administrators, and assigns, that he the said J. R. H. hath not at any time or times heretofore, made, done, executed, committed, or willingly or knowingly suffered any act, deed, matter, or thing whatsoever, whereby, or by reason, or means whereof, the said messuages, farms, lands, hereditaments, and premises hereby released, or otherwise assured or intended so to be, or the said leasehold pieces or parcels of land, and other the personal estate hereby released and assigned or intended so to be, or any part of the same respectively, shall or may be impeached, charged, incumbered, or in any wise affected in title, charge, estate, or otherwise howsoever. *In witness, &c.*

## FORM V.

*Recovery Deed for three Resourceries in different Counties, when the Object is to preserve Contingent Remainders : and also to prevent Merger ; and correct the Intention of a Testator in the Dispositions made by his Will. See p. 114 of the Text. Thoughth is deed was supposed to concern equitable Estates, yet as that was not ascertained, it was prepared as if the Estates had been legal.*

THIS INDENTURE of seven parts, made the 2d day of July A. D. 1805, and 45 George III. &c. between J. W. of &c. Esq. and J. F. of &c. merchant, of the first part ; E. W. of &c. spinster, of the second part ; the said J. W. of the third part ; J. H. of &c. gentleman, of the fourth part ; J. M. of the same place, gentleman, of the fifth part ; E. G. of &c. merchant of the sixth part ; and J. G. of &c. Esq. of the seventh part. *Whereas* J. W. late of &c. Esq. deceased, was at the date of his will hereinafter recited, and also at his death, seised of, or otherwise intituled to a moiety of two 36th parts, being a share he purchased of the Right Honourable Elizabeth Lady Viscountess B. and a moiety of one other 36th part, being a share he purchased of W. P. H. Esq. and others ; and a moiety of one other 36th part, being a share he purchased of the Honourable F. W. and C. his wife, of and in that moiety or half part of the New River water-cut and stream brought from C. and A. in the counties of H. and M. or one of them to L. and other

places adjacent, commonly called, the King's Moiety, and the profits, advantages, and hereditaments thereto belonging; And was also seised of or intitled to one full 36th share of the moiety of the said water-cut and stream and hereditaments, called the Adventurer's Moiety. *And whereas* the said J. W. by his last will and testament in writing duly executed and attested for the devise of lands of inheritance, and bearing date on or about the 31st day of March in the year 1803; (amongst other things) gave, devised, and bequeathed unto his dear son, the said J. W. and to his friend, the said J. F. and the survivor of them, and to the heirs of such survivor, *All* that his (the said testator's) part or share, commonly called a King's Share, of and in the New River, with the rights, members, and appurtenances: *Upon trust* to pay the interest, dividends, and produce arising therefrom, unto his daughter the said E. W. for and during her natural life; and from and after her decease, he gave and devised the said part or share called a King's Share, with the appurtenances, unto and amongst the children of his said daughter in equal shares and proportions, and if but one child, then to such only child. But in case his said daughter should happen to die without leaving issue, then he gave and devised the said part and share called a King's Share, with the appurtenances unto his said son J. W. his heirs and assigns, or in case of his death, to his children, share and share alike. And after bequeathing divers pecuniary legacies, the said testator, by his said will, gave, devised, and bequeathed *All* the rest, residue, and remainder of his real and perso-

nal estate whether freehold, copyhold, or leasehold, or of whatever nature or kind soever, or wheresoever, which he might be possessed of, or any ways intituled to, at the time of his decease, unto his son the said J. W. his heirs, executors, administrators, and assigns for ever, according to the nature and tenure of his said estates and effects. And the said testator appointed his said son J. W. to be sole executor of his said will. *And whereas* the said testator J. W. departed this life without having in any manner revoked or altered his said in part recited last will and testament, and the same last will and testament was after his decease, and on or about the        day of        duly proved in the Prerogative Court of the Archbishop of Canterbury. *And whereas* it is apprehended, that the devise to the said J. W. and J. F. upon trust as aforesaid, contained in the said in part recited will, may be construed to extend to the whole of the share and interest which the said testator J. W. had at the time of his decease in that part of the New River called the King's Moiety, and that the said E. W. is seised of an estate-tail in remainder under the limitations or dispositions contained in the will of her said father. *And whereas* the legal estate of the said New River water-works and shares therein is or is understood to be vested in the Governor and Company of the said New River in their corporate capacity. *And whereas* the said E. W. is fully satisfied that the intention of her said father in making such devise was to give to the said J. W. and J. F. *in trust* for her and her children as aforesaid, a share or

shares equal to one 36th part or share of the said King's Moiety in the said New River and no more : and the said E. W. is desirous and hath agreed, in order to remove all doubts and difficulties which may arise upon the construction of the said devise to settle and assure all the shares and interests late of her said father in the King's Share of the said New River, according to such his supposed intention, and for that purpose to suffer a recovery of the said shares and hereditaments, and in order to render such recovery effectual as far as the said J. W. is interested, he and (at the request of the said J. W. and E. W.) the said J. F. have agreed to join in these presents in such manner as hereinafter is contained. *Now this indenture witnesseth*, that in pursuance of the several agreements hereinbefore mentioned, and for docking, barring, destroying, and extinguishing all estates-tail, of and in the several parts, shares, and interests in the New River, and the profits thereof and other hereditaments hereinafter mentioned, and released or otherwise assured or intended so to be, and all reversions and remainders expectant upon such estates-tail, and all conditions and collateral limitations annexed thereto, and for settling and assuring the same parts, shares, and hereditaments, respectively, *to the uses*, upon the trusts, and for the ends, intents, and purposes hereinafter limited, expressed, and declared of and concerning the same, and in consideration of ten shillings of lawful money current in Great Britain to each of them the said J. W. J. F. and E. W. well and truly paid by the said J. H. immediately before the execution of

these presents, the receipt whereof is hereby acknowledged, the said J. F. at the special instance and request, and with the privity, consent, and approbation, and by the direction and appointment of the said J. W. and E. W. testified by their severally executing these presents, *hath* bargained, sold, and released, and by these presents *doth* bargain, sell, and release, and the said J. W. and E. W. according to their respective estates, rights, and interests in the premises, *have* and each of them *hath* granted, bargained, sold, aliened, released, ratified, and confirmed, and by these presents *do* and each of them *doth* grant, bargain, sell, alien, release, ratify, and confirm, unto the said J. H. his heirs and assigns, (in the actual possession of the said J. H. now being in virtue of a bargain and sale thereof made to him by the said J. F. J. W. and E. W. in consideration of five shillings paid to each of them by the said J. H. by indenture bearing date on the day next before the day of the date and executed before the execution of these presents, for one whole year, to be computed from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute made for transferring uses into possession, *all* that one full and equal moiety, half part, or share, late of the said J. W. of, in, and to *All* those two full and intire six-and-thirtieth parts or shares; *And* all that one full and equal moiety, half part, or share, late of the said J. W. of, in, and to *all* that one other full and intire six-and-thirtieth part or share; *And also* all

that one full and equal moiety, half part, or share, late of the said J. W. of, in, and to *All* that one other full and intire six-and-thirtieth part or share, of and in *All* that moiety or half part of the New River water-cut and stream and the profits thereof, brought from C. and A. in the counties of H. and M. or one of them, to L. and other places adjacent, commonly called the King's Moiety (the said moiety or half, into six-and-thirty parts or equal shares to be divided) and also of and in the King's Moiety of all hereditaments whatsoever relating unto or concerning the said New River cut or stream, and of and in all manner of profits, advantages, and commodities whatsoever, thereof, or by means or reason thereof, in any sort to be paid, raised, and gotten; *And also* of and in the King's Moiety or half part of all fines, sums of money, rents, reversions, benefits, and commodities whatsoever, that at any time or times hereafter shall or may be raised, had, made, levied, or gotten, by means of the said New River water or water-works, or of or by reason of the conveyance of the water thereof, in or by any parts or places, or unto or for any person or persons whatsoever; and all and singular other the parts, shares, and interests, late of the said J. W. of, in, and to the said moiety, or half part, called the King's Moiety of the said New River water-cut and stream, and the profits thereof and the commodities, hereditaments, and appurtenances, to the same belonging or appertaining; *And* the reversion and reversions, remainder and remainders, yearly and other rents and profits of the said hereby, or hereby intended to be released,



parts, shares, and hereditaments, and every part and parcel of the same, with the appurtenances; *To have and to hold* the said parts or shares hereinbefore mentioned, and hereby released, or otherwise assured, or intended so to be, of and in the said moiety of the said New River water-cut and stream, and the profits thereof, called the King's Moiety, hereditaments, and all and singular other the premises hereinbefore mentioned, and hereby released, or otherwise assured, or intended so to be, and every part of the same, with their and every of their rights, members, and appurtenances, unto the said J. H. his heirs, and assigns, during the natural life of the said E. W. *to the uses* hereinafter limited, and declared; that is to say, *to the use* of the said J. H. and his assigns during the joint natural lives of the said J. H. and E. W. and from and after the determination of that estate, *then to the uses* hereinafter limited and declared of the recoveries hereby agreed to be suffered. *And* it is hereby declared, and agreed, that the estate hereby limited to the use of the said J. H. and his assigns, during the joint lives of himself and the said E. W. is so limited to him and them, *to the intent* that the said J. H. may be tenant of the freehold of all and singular the said several parts and shares hereby released, or otherwise assured, or intended so to be, of and in the said King's Moiety, of the said New River water-cut and stream, and the profits thereof, hereditaments, and premises, and every part, and parcel of the same, with their rights, members, and appurtenances; *to the end* that three or more good and

perfect common recoveries, with double voucher, may be had and suffered of the same parts, and shares, and hereditaments, and for that purpose it is hereby directed, declared, and agreed, by and between all the said parties to these presents, *that* the said J. H. shall permit and suffer the said J. M. or some other person or persons, at the costs and charges, in all things, of the said J. W. his heirs, executors, or administrators, at any time or times hereafter, to sue forth, and prosecute against him the said J. H. out of his majesty's high court of Chancery, three or more, writs of entry, *sur disseisin en le post*, returnable before his majesty's justices of the court of Common Pleas, at Westminster, and by one or more of the said writs, demand of the said J. H. the parts and shares hereby released or otherwise assured, or intended so to be, of such and so many, and such part and parts of the said King's Moiety of the New River water-cut and stream, profits and hereditaments, as are situate, lying, and being, or arising and to be had and taken in the said county of H. with the appurtenances, and by one or more of the said writs, demand of the said J. H. the parts and shares hereby released, or otherwise assured, or intended so to be, of such, and so many, and such part and parts, of the said King's Moiety of the said New River water-cut and stream profits, and hereditaments as are situate, lying, and being, or arising and to be had and taken in the said county of M. and by one or more of the said writs, demand of the said J. H. the parts and shares hereby released, or otherwise assured, or intended so to be, of

such, and so many, and such part and parts, of the said King's Moiety of the said New River water-cut and stream, profits and hereditaments as are situate, lying, and being, or arising and to be had and taken within the city of L. and demand the said shares respectively, by such apt, good, sufficient, and proper names, quantities, qualities, and other descriptions as shall be deemed necessary, proper, sufficient, and requisite to comprise the same; and that the said J. H. shall in his own proper person, or by his attorney or attornies, lawfully authorized in that behalf, appear to each of the same writs respectively, and vouch to warranty the said E. W.; and that the said E. W. shall in her own proper person, or by her attorney or attornies, lawfully authorised in that behalf, appear gratis, and freely enter into the warranty of the said J. H. and taking the same upon herself, vouch over to warranty the common vouches of the court of Common Pleas, for the time being, who shall appear gratis, and freely enter into the warranty of the said E. W. and after imparlance make default, so that judgment may be given upon each of the said writs, for the said J. M. or other demandant or demandants, to recover all and singular the parts and shares hereby released or otherwise assured, or intended so to be, of and in such and so many and such part and parts of the moiety of the said New River water-cut and stream, profits and hereditaments, called the King's Moiety, as shall be demanded by the same writs respectively, with their rights, members, and appurtenances, against the said J. H. and for the

said J. H. to recover in value against the said E. W. and for the said E. W. to recover in value against the common vouchee as is usual in such cases, and that upon all and every recovery and recoveries to be suffered as aforesaid, execution may be sued and prosecuted by, and seisin had, taken, and delivered unto the said J. M. or other Demandant or demandants accordingly; and that every other act or thing needful, requisite, or proper to be done or executed for the purpose of suffering and perfecting a common recovery or recoveries of the parts and shares, hereditaments and premises, hereby released, or otherwise assured, or intended so to be, with double, treble, or other voucher, to bar the estate-tail of the said E. W. of and in the said parts, shares, hereditaments, and premises, and all reversions and remainders over and expectant upon the same estate, may be made, done, and executed; and by way of direction and declaration, and not of covenant, it is hereby granted, declared, and agreed, by and between the parties to these presents, as far as they respectively are interested, and they hereby for themselves, severally and respectively, and for their several and respective heirs, executors, and administrators, consent, and agree, according to their respective estates, rights, and interests, in the premises, that the recoveries hereby agreed to be suffered, shall be suffered and perfected with all possible dispatch; and that they respectively, and their respective heirs, on their respective parts, will use their utmost endeavours to give effect to the same recoveries, and also to these presents, and the

grant, release, confirmation, or other assurance hereby made. *And* it is hereby further directed, declared, and agreed by and between all the parties to these presents, as far as they respectively have any right, title, or interest in the premises, that immediately upon and after judgment obtained, and seisin had and taken upon each such recovery as aforesaid, each recovery so as aforesaid or in any other manner, or at any other time or times to be suffered, and also the bargain and sale for a year, bearing date on the day next before the day of the date of these presents, and also these presents, and the assurance hereby made, and all and every other fine and fines, recovery and recoveries, and other assurances whatsoever, at any time or times heretofore, and to be at any time, and from time to time hereafter, had, made, done, levied, suffered, executed, and perfected, of or concerning all or any part of the said parts and shares, hereditaments and premises, hereby released, or otherwise assured or intended so to be, either by themselves solely and alone, or jointly and together, with any other lands, tenements, or hereditaments, parts or shares, by or between all and every, or any or either, of the persons who are parties to these presents, or to which they, or any, or either of them is, or are, or shall, or may be parties or privies, or a party or privy shall, as to all the said parties to these presents respectively, as far as they respectively can lawfully or rightfully direct the uses of the same fine or fines, common recovery or recoveries, and other assurances, be and enure, and be adjudged, expounded,

deemed, decreed, and taken to be and enure, and that the same was and were meant and intended, and is and are hereby directed and declared to be and enure, and also that the person or persons to whom such fine or fines, common recovery and recoveries, and other assurances respectively, have or hath been, or shall or may be, levied, suffered, made, and executed, shall stand and be seised, *as to, for, and concerning* the said several parts and shares hereby released, or otherwise assured or intended so to be, of and in the said moiety of the said New River water-cut and stream, profits, and hereditaments, called the King's moiety, and every part and parcel of the same, with the appurtenances; *To the uses*, upon the trusts, and for the ends, intents, and purposes hereinafter limited, expressed, and declared, of and concerning the same, (that is to say) *To the use* of the said J. W. and J. F. their heirs and assigns, during the life of the said E. W. *upon the trusts* hereinafter declared of their estate; and from and after the determination of that estate by any means in her life time, *to the use* of the said E. G. his heirs and assigns, during the natural life of the said E. W. *upon trust* to support and preserve the contingent estates limited to the children of the said E. W. by the will of her said father; and from and after the decease of the said E. W. *to the use* of the said J. W. and J. F. their heirs and assigns for ever, upon the trusts hereinafter declared of their estate, *And* it is hereby directed, declared, and agreed by and between the parties to these presents, as far as they respectively are interested, that the

Several limitations hereinbefore made to the use of the said J. W. and J. F. their heirs and assigns, for the life of the said E. W. and in fee are made to them *upon trust* and to the intent and purpose that they the said J. W. and J. F. their heirs executors, and administrators, and every of them, shall and may, by, with, and out of the profits of the said several parts and shares, or otherwise by a mortgage or mortgages, sale or sales, of the same parts and shares, or a competent part of the same, be well and sufficiently reimbursed and satisfied, and also indemnified and saved harmless, of, from, and against all damages, losses, costs, charges, expences, suits, claims, and demands, which at any time or times, and from time to time, hereafter, shall or may be incurred, or sustained by, or made upon, or brought or instituted against, the said J. W. and J. F. or either of them, their, or either of their heirs, executors, or administrators, for or on account of their having joined, (as trustees under the said in part recited will of the said J. W.) in the conveyance or assurance made or intended to be made by these presents, and from and after full reimbursement and satisfaction of and for all such damages, losses, costs, charges, expences, suits, claims, and demands, and in the mean time subject thereto; *As*, to, for, and concerning one moiety, half part, or share, of twosix-and-thirtieth parts or shares, making together one full and intire six-and-thirtieth part or share, of and in the said moiety called the King's Moiety of the said New River water-cut and stream, and the profits thereof, and other hereditaments, with the appur-

tenances (being the part or share which was purchased by the said J. W. of and from the said E. Lady Viscountess B.) *upon trust* that they the said J. W. and J. F. and the survivor of them, or his heirs, do and shall from time to time, during the natural life of the said E. W. retain and take, the rents, income, and profits arising from the same parts or shares, and hereditaments, and stand and be possessed thereof, for the sole use of the said E. W. separate and apart from, and exclusive of any husband with whom she may from time to time intermarry, and so, and in such manner, that the same may not be under the controul, or subject or liable to the debts, contracts, forfeiture, or engagements of any such husband, and in such manner that the receipt of her the said E. W. or any person or persons to whom she may appoint the same rents, income, and profits when due, may be good and effectual discharges for the money which shall be thereby expressed to be received; yet nevertheless so that the said E. W. may not at any time hereafter anticipate, charge, or assign all or any part of the same rents, income, and profits, before the same shall become due and payable, and from and after the decease of the said E. W. then *upon trust* for the child if only one, or if more than one, for the several children of the said E. W. who are or shall become intitled to the same parts, shares, and hereditaments, under or by virtue of the said in part recited will of the said J. W. and for such estates and in such shares and proportions as such child or children can claim to be intitled to have, in the same parts, shares, and



hereditaments under or by virtue of the same will; and from and after the determination of the estates and interests of the same children respectively, then *in trust* for the child, if only one, and if more than one, then all the children of the said E. W. lawfully to be begotten, to be equally divided between or among the same children if more than one, share and share alike, as tenants in common, and not as joint-tenants, and the heirs and assigns of the same child or children respectively, in fee, and not in tail; and in case any one or more of such children shall depart this life under the age of twenty-one years without leaving any issue of his, her, or their body or bodies lawfully begotten, living at his, her, or their death or respective deaths, then as, to, for, and concerning the original part or share of and in the parts or shares and hereditaments hereinbefore limited for the benefit of the said children: and also the part or share, or parts or shares thereof which from time to time shall belong to, or vest in, or be taken by, the same child or children respectively, by virtue of this present provision, in the nature of cross remainders, *upon trust* for the other or others of the same children to be equally divided between or among them if more than one, share and share alike, as tenants in common, and not as joint-tenants, and his, her, and their heirs and assigns for ever. And in case there shall not be any child of the said E. W. or if all such children, if any, shall depart this life under the age of twenty-one years, and neither of them shall leave any issue of his or her body lawfully begotten, living at his or her

death, then *upon trust* for the said J. W. his heirs and assigns for ever. *And* as, to, for, and concerning the remaining parts and shares hereby released, or otherwise assured or intended so to be, of and in the said moiety called the King's Moiety of the said New River water-cut or stream, and the profits thereof, and other hereditaments, with the appurtenances, *in trust* for the said J. W. his heirs and assigns for ever, and to, for, or upon no other use, trust, intent, or purpose whatsoever. *Provided always*, and it is hereby declared and agreed by and between the parties to these presents, as far as they respectively are interested, that the trusts hereinbefore declared in favour of each and every of the children of the said E. W. (other than and except the trusts declared for his or her benefit for the purpose of restoring to him or her the estate or interest to which the same child respectively may be entitled under the will of the said J. W.), are so declared upon the terms that the same child shall confirm and give effect to the trust, secondly, hereinbefore declared for the benefit of the said J. W. his heirs and assigns, and that the same child shall upon the request and at the costs and charges of the said J. W. his heirs or assigns, do all such acts, and make and execute all such assurances, as shall be necessary or deemed advisable for the purpose of conveying and assuring to the said J. W. his heirs and assigns; the parts, shares, and hereditaments, secondly hereinbefore limited, *in trust* for the said J. W. his heirs and assigns; and further, that on default by each, any, or either of the same children to

make such confirmation, or to do such acts, or make or execute such assurances, the part or share, including the surviving, as well as the original share of each child, by whom such default shall be made, shall be held, in trust for the said J. W. his heirs, and assigns. *And this indenture also witnesseth*, that, for the considerations hereinbefore expressed, and by way of further assurance, and so as to convey the inheritance of and in the said shares, and hereditaments, and every of them, to the uses hereinafter limited of the same shares and hereditaments, and also in consideration of ten shillings of like lawful money, to each of them, the said E. W. and J. W. well and truly paid by the said J. G. immediately before the execution of these presents, the receipt whereof is hereby acknowledged, the said E. W. and J. W. (subject, nevertheless, and without prejudice to the grant hereinbefore contained), *have* and each of them *hath* granted, bargained, sold, and aliened, and by these presents, *do*, and each of them *doth* grant, bargain, sell, and alien, unto the said J. G. his heirs, and assigns, all those the parts, or shares of them, and each or either of them the said E. W. and J. W. of and in the said moiety, of the said new river cut or stream, and other hereditaments hereinbefore mentioned, or described, and all other the hereditaments hereinbefore described and mentioned, and intended to be hereby released to the said J. H. and his heirs, during the life of the said E. W. and every part and parcel of the same, with the appurtenances, and the reversion and reversions, remainder

and remainders, yearly and other rents and profits, of the said hereby, or hereby intended to be, granted, or otherwise assured parts or shares, and hereditaments, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, *to have and to hold* the said parts, shares, hereditaments, and all and singular other the premises hereby granted, or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, unto the said J. G. his heirs and assigns, *to the uses*, and upon the trusts, and for the ends, intents, and purposes hereinafter limited, expressed, and declared, or referred to, (that is to say) in the first place, *to the use* of the said E. G. his heirs and assigns, during the life of the said E. W. so as to give effect to and confirm the estate hereinbefore limited to the use of the said E. G. his heirs and assigns, during the life of the said E. W. nevertheless upon, under, and subject to the trusts hereinbefore declared of that estate, and from and after the determination of that estate, and in the mean time subject thereto ; *To the use* of the said J. W. and J. F. their heirs and assigns for ever, upon the trusts, and for the ends, intents, and purposes hereinbefore expressed and declared of and concerning the estate in fee hereinbefore limited to their use, and for more effectually confirming and giving effect to that estate, and the trusts, ends, intents, and purposes hereinbefore limited and declared thereof. *And* each of them the said J. W. and E. W. severally, separate, and

apart from the other of them, doth by these presents, for himself and herself respectively, and his and her respective heirs, executors, and administrators; and as, to, and concerning only his and her own acts, deeds, and defaults, covenant, promise, and agree to and with the said J. H. his heirs and assigns, that they, the said J. W. and E. W. respectively shall and will, from time to time, and at all times hereafter, upon every reasonable request of the person or persons intituled by virtue of these presents to any estate or interest in the parts, or shares, and hereditaments hereby released, or otherwise assured, or intended so to be, or any or either of them, and at the costs and charges of the person or persons by whom such request shall be made, make, do, acknowledge, levy, suffer, execute, and perfect, or cause or to procure to be made, done, acknowledged, levied, suffered, executed, and perfected, all such further and other lawful and reasonable acts, deeds, devices, conveyances, and assurances, in the law whatsoever, either by fine or fines, with or without proclamations, common recovery or recoveries, deed or deeds, inrolled or not inrolled, release, confirmation, or other assurance whatsoever, for further, better, more perfectly, lawfully, and absolutely, or satisfactorily granting, releasing, confirming, or otherwise assuring the said parts, shares, and hereditaments hereby released, or otherwise assured, or intended so to be, and every part and parcel of the same, with the appurtenances; to the uses, upon the trusts, and for the ends, intents, and purposes hercinbefore

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limited, expressed, and declared of and concerning the same, according to the true intent and meaning of these presents, as by the person or persons so intitled, and making such request, or his, her, or their counsel in the law, shall be reasonably devised, or advised, and required, and tendered to be made, done, and executed, *In witness, &c.*

## FORM VI.

*Release in Fee of three undivided sixth Parts, being a Moiety of a Messuage Farm, &c. in T. and S. in the Parish of S. &c. in the County of Y. that a common Recovery may be suffered thereof, to bar the Estates-tail, if any, and to extinguish the title of Dower, of the Wife of one of the Owners : with a Declaration, as to one sixth Part, of Uses, to prevent a new Title of Dower : and as to the two remaining sixth Parts, of Uses in Favour of the Owners in Fee.*

THIS INDENTURE of five parts made the day of 1805, between T. B. of &c. gentleman, and E. his wife, of the first part ; B. C. of &c. gentleman, of the second part ; M. S. of &c. spinster of the third part ; C. R. of &c. Esq. of the fourth part ; and W. B. of &c. gentleman, of the fifth part. *Whereas* the said T. B. is the only son and heir at law, and issue in tail, of J. B. one of the daughters of M. S. late of &c. gentleman, deceased, and a devisee named in his will. *And whereas* the said B. C. is the grandson, heir at law, and issue in tail of M. C. one other of the daughters of the said M. S. and a devisee named in his will. *And whereas* the said M. S. is the granddaughter, heir at law, and issue in tail of T. S. one of the sons of the said M. S. and a de-

vissee named in his will, and as such (J. S. the eldest son, and heir at law, and a devisee in tail, named in the will of the said M. S. having died without issue,) the said T. B. B. C. and M. H. are seised in fee-simple, or fee-tail, of three sixth parts, of and in the messuages, lands, and hereditaments hereinafter described, and hereby released, or otherwise assured, or intended so to be, with their and every of their rights, members, and appurtenances, under or by virtue of the last will and testament of the said M. S. bearing date on or about the 8th day of October, in the year 1748, and after his death, and on or about the 12th day of February 1758, proved in the

court of *And whereas* the said T. B. B. C. and M. S. are desirous, and have determined to suffer a common recovery of their respective shares of and in the said messuages, lands, and hereditaments, and to limit the same shares to the uses hereinafter declared of and concerning the same respectively. *And whereas* the said C. B. hath agreed to join in the common recovery, hereinafter agreed to be suffered, for the purpose of barring and extinguishing her dower, right, or title of dower, in the said share of her said husband of the same hereditaments. *Now this indenture witnesseth*, that, for docking, barring, and destroying all estates-tail of and in the said several and respective three sixth parts of and in the messuages, lands, and hereditaments hereinafter mentioned, and all reversions and remainders expectant or depending on the same estates tail, and all conditions and collateral limitations an-



annexed thereto, and for settling and assuring the same parts or shares of and in the said messuages, lands, and hereditaments *to the uses* and for the ends, intents, and purposes hereinafter expressed and declared concerning the same; and in consideration of ten shillings of lawful money of the united kingdom of Great Britain and Ireland; current in Great Britain to each of them the said T. B. B. C. and M. S. well and truly paid by the said W. B. immediately before the execution of these presents, the receipt whereof is hereby acknowledged, the said T. B. B. C. and M. S. according to their respective shares and interests, *have*, and each and every of them *hath* granted, bargained, sold, aliened, released, and confirmed, and by these presents *do*, and each and every of them *doth* grant, bargain, sell, alien, release, and confirm unto the said W. B. his heirs and assigns, (in the actual possession of the said W. B. now being in virtue of a bargain and sale thereof made to him by the said T. B. B. C. and M. S. in consideration of five shillings paid to each of them, by the said W. B. by indenture bearing date on the day next before the day of the date, and executed before the execution of these presents for one whole year, to be computed from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute made for transferring uses into possession), *All* those three undivided sixth parts, or shares of them the said T. B. B. C. and M. S. respectively (the whole into six equal parts to be divided, and being equal to one moiety, or halfpart,) of and in

all that messuage or tenement farm, and those several cottages, closes, pieces, or parcels of land, intacks and hereditaments, situate, lying, and being at or in S. in the parish of S. in the said county of Y. and the township or hamlet of T. in the said county of Y. and containing by estimation 159 acres, or thereabouts, be the same more or less, which were late the inheritance of the said M. S. deceased, and are now or were lately in the several tenures or occupations of

And also of and in all and all manner of tithes, tenths, oblations, obventions, and other dues great and small, arising, coming, increasing, and renewing, upon, from, and out of the hereditaments hereinbefore described, or any of them.

*And also* of and in all those several closes, pieces, and parcels of land, and hereditaments situate, lying, and being in the township of T. near R. in the said county of Y. now or formerly called by the several names of                      and a garden adjoining to Great P. or the site of the same garden, and containing together by estimation, including the broken ground adjoining to the cliff, twenty-one acres and two roods, or thereabouts, which said messuage, lands, and hereditaments first hereinbefore described, are the same messuage, lands, and hereditaments, which by a different description were conveyed and assured to and to the use of the said M. S. his heirs and assigns, by certain indentures of lease, and release, bearing date respectively on or about the ninth and tenth days of April, in the year 1732, and made, or expressed to be made between J. H. of &c. mariner,

of the one part, and the said M. S. then of &c. gentleman, of the other part, and which said last mentioned closes, pieces, and parcels of land and hereditaments are the same hereditaments which were conveyed and assured to and to the use of the said M. S. his heirs and assigns for ever, by certain indentures of lease and release, bearing date respectively on or about the tenth and eleventh days of March, in the year 1707, and made, or expressed to be made, between T. W. of &c. gentleman, of the one part, and the said M. S. therein described as M. S. of &c. mariner, of the other part; *And also* of and in all houses, cottages, outhouses, edifices, buildings, barns, stables, yards, gardens, orchards, closes of land, meadow, and pasture, feedings, woods, underwoods, and the ground and soil thereof, commons and common of pasture and of turbary, and other commonable rights, tithes, tenths, wrecks of the sea, scar dues, land covered with water, cliffs, hedges, ditches, fences, mounds, ways, paths, waters, water-courses, liberties, privileges, easements, profits, commodities, advantages, and emoluments whatsoever to the said messuages or tenements, lands, and hereditaments hereinbefore described, or any of them respectively, belonging or in any wise appertaining, or accepted, reputed, deemed, taken, known, held, occupied, or enjoyed as part, parcel or member of the same, or any of them respectively; *and* of and in all other the freehold messuages or tenements, lands, tithes, and hereditaments situate, lying, and being or arising in T. S. and parish of S. or any of them, in the said county

of Y. which were devised by the said M. S. in and by his last will and testament, bearing date on or about the 8th October 1748, to his the said testator's two sons, J. S. T. S. and to his four daughters therein named, and grandson M. S. as therein mentioned as tenants in tail, excepting, and always reserving, out of the grant or release hereby made, so much and such parts of the said fields or closes of land now or formerly called Lanefield, as have been taken out of the same fields, or closes of land, for making a road to R. and have been sold for that purpose; *and* the reversion and reversions, remainder and remainders, yearly and other rents and profits of the said hereby, or hereby intended to be released parts or shares of the said messuages, lands, and hereditaments, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, except as aforesaid; *and* all the estate, right, title, interest, use, trust, inheritance, term and terms for life or lives, property, possession, benefit, and equity of redemption, claim, and demand whatsoever, at law and in equity, or otherwise howsoever of them the said T. B. B. C. and M. S. respectively of, in, to, and out of the same parts, or shares of the same messuages, lands, and hereditaments, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, except as aforesaid. *To have and to hold* the said hereby or hereby intended to be released or otherwise assured parts or shares of and in the said messuages, lands, and hereditaments, and all and singular the premises hereby

released, or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, except as aforesaid, unto the said W. B. his heirs and assigns; *to the use* of the said W. B. his heirs and assigns: *to the intent* that the said W. B. may be tenant of the freehold, of all and singular the said hereby, or hereby intended to be released or otherwise assured parts or shares of and in the said messuages, lands, and hereditaments, and every part and parcel of the same, with their rights, members, and appurtenances; *to the end* that one or more good and perfect common recovery or recoveries, with double voucher, may be had and suffered of the same parts, shares, and hereditaments; and for that purpose it is hereby directed, declared, and agreed by and between all the said parties to these presents, that the said W. B. shall permit and suffer the said C. R. or some other person or persons, at the costs and charges in all things of the said T. B. B. C. and M. S. their heirs, executors, or administrators, at any time or times hereafter, to sue forth and prosecute against him the said W. B. out of his majesty's high court of Chancery, one or more writ or writs of entry *sur disseisin en le post*, returnable before his majesty's justices of the court of Common Pleas at Westminster, and thereby demand of the said W. B. the said hereby or hereby intended to be released or otherwise assured parts or shares of and in the said messuages, lands, and hereditaments, with their and every of

their rights, members, and appurtenances, by the names and descriptions of one moiety of four messuages, four gardens, 180 acres of land, 50 acres of meadow, 50 acres of pasture, 12 acres of wood, 12 acres of underwood, 50 acres of moor, 50 acres of furze, and heath, and common of pasture, for all manner of cattle, common of turbary, and wreck of the sea, with the appurtenances, in T. S. and in the parish of S. and of and in all and all manner of tithes and tenths whatsoever, yearly arising, increasing, and renewing out of, upon, and from the said tenements in S. aforesaid, or by such other apt, good, sufficient, and proper names, number of messuages and acres, quantities, qualities, and other descriptions as shall be deemed necessary, proper, sufficient, and requisite to comprise the same; And that the said W. B. shall in his own person, or by his attorney or attornies lawfully authorised in that behalf, appear to the same writ or writs, and vouch to warranty the said T. B. and E. his wife, B. C. and M. S. and that the said T. B. and E. his wife, B. C. and M. S. shall in their own persons or by their attorney or attornies lawfully authorised in that behalf, appear gratis, and freely enter into the warranty of the said W. B. and taking the same upon themselves respectively, vouch over to warranty the common voluthee of the said court of Common Pleas for the time being, who shall appear gratis, and freely enter into the warranty of the said T. B. and E. his wife, B. C. and M. S. and after imparlance make default, so that judgment may be given upon the said writ or writs, and every of them, for the said C. R. or other de-

## RECOVERY DEED.

mandant or demandants, to recover all and singular the said parts or shares of the said messuages, lands, and hereditaments, and every part and parcel of the same parts or shares, with their and every of their rights, members, and appurtenances, by such names, quantities, qualities, and other descriptions as aforesaid, against the said W. B. and for the said W. B. to recover in value against the said T. B. and E. his wife B. C. and M. S. and for the said T. B. and E. his wife, B. C. and M. S. to recover in value against the common vouchee, as is usual in such cases; and that upon all and every recovery and recoveries to be suffered as aforesaid execution may be sued and prosecuted by, and seisin had, taken, and delivered unto the said C. R. or other demandant or demandants, accordingly; and that every other act or thing needful, requisite, or proper to be done or executed for the purpose of suffering and perfecting a common recovery or recoveries of those parts or shares of the said messuages or tenements, lands and hereditaments, which are hereby released, or otherwise assured or intended so to be, with double, treble, or other voucher, to dock the estates-tail of the said T. B. B. C. and M. S. of and in the same parts or shares, and all reversions and remainders over and expectant upon the same estates-tail, and to extinguish the dower, right, and title of dower of the said E. B. may be made, done, and executed: *And* by way of direction and declaration, and not of covenant, it is hereby granted, declared, and agreed, by and between the parties to these presents, and they hereby for themselves

severally and respectively, and for their several and respective heirs, executors, and administrators, according to their respective estates, rights, and interests in the premises, consent and agree, that the recovery hereby agreed to be suffered shall be suffered and perfected, with all possible dispatch, and that they respectively and their respective heirs on their respective parts, will use their utmost endeavours to give effect to the same recovery and also to these presents, and the grant, release, confirmation, or other assurance hereby made. *And* it is hereby further directed, declared, and agreed, by and between all the parties to these presents, as far as they respectively have any right, title, or interest in the premises, that immediately upon and after judgment obtained and seisin had and taken upon such recovery or recoveries as aforesaid, the recovery or recoveries so as aforesaid or in any other manner, or at any other time or times to be suffered; *and also* the bargain and sale for a year, bearing date on the day next before the day of the date of these presents, and also these presents, and the assurance hereby made, and all and every other fine and fines, recovery and recoveries, and other assurances whatsoever at any time or times heretofore and to be any time, and from time to time hereafter had, made, done, levied, suffered, executed, and perfected of or concerning all or any part of those parts or shares of the said messuages, lands, and hereditaments which are hereby released, or otherwise assured, or intended so to be, either by themselves solely and alone, or jointly and together with any other part



of the same messuages, lands, and hereditaments, or jointly and together with any other lands, tenements, or hereditaments, by or between all and every, or any or either of the persons who are parties to these presents, or to which they, or any or either of them, is or are, or shall or may be parties or privies, or a party or privy, shall, as to all the said parties to these presents respectively, as far as they respectively can lawfully or rightfully direct the uses of the same fine and fines, common recovery and recoveries, and other assurances, be and enure, and be adjudged, expounded, deemed, decreed, and taken to be and enure, and that the same was and were meant and intended, and is and are hereby directed and declared to be and enure; *And also* that the person and persons to whom the said fine or fines, common recovery or recoveries, and other assurances respectively, have or hath been, or shall or may be levied, suffered, made, and executed, shall stand and be seised *as*, to, for, and concerning one of the said three undivided sixth parts. (being the part or share of the said T. B.) of and in the said messuages, lands, and hereditaments, with the rights, members, and appurtenances, *to the use* of such person or persons, for such estate or estates, and for such interest or interests by way of annuity, rent charge, or otherwise, and in such parts, shares, and proportions, and upon such trusts, and for such ends, intents, and purposes, and charged and chargeable in such manner and either absolutely or conditionally, and subject to such powers of revocation and of new appointment and other powers, provisoes, conditions, re-

strictions, limitations, declarations, and agreements, as the said T. B. at any time or times, and from time to time by any deed or deeds, instrument or instruments in writing to be sealed and delivered by him in the presence of two or more credible witnesses, and attested by the same witnesses, shall direct, limit, or appoint; And in default of such direction, limitation, and appointment, and in the mean time and from time to time until the same shall take effect, and from time to time subject to such uses, estates, trusts, charges, and interests as shall have been directed, limited, or appointed by the said T. B. then *to the use* of the said T. B. and his assigns for and during the term of his natural life; and from and after the determination of that estate by any means in his life-time, then *to the use* of the said C. R. his heirs and assigns during the natural life of the said T. B. *upon trust* for, and for the sole benefit of, the said T. B. and his assigns, and to the intent that the present or any future wife of the said T. B. may not be intitled to dower, and from and after the determination of the estate hereby limited to the use of the said C. R. his heirs and assigns, for the life of the said T. B. then *to the use* of the said T. B. his heirs and assigns for ever, and to, for, and upon no other use, trust, intent, or purpose whatsoever; *And as*, to, for, and concerning one other of the said three undivided sixth parts (being the undivided part or share of the said B. C.) of and in the same messuages, lands, and hereditaments, with the rights, members, and appurtenances, *to the use* of the said

B.C. his heirs and assigns for ever; *And* as, to, for, and concerning the other of the said three undivided sixth parts (being the undivided part or share of the said M. S.) of and in the same messuages or tenements, lands and hereditaments, with the rights, members, and appurtenances, *to the use* of the said M. S. her heirs and assigns for ever, and to, for, and upon no other use, end, intent, or purpose whatsoever: *In witness, &c.*

## FORM VII.

*Bargain and Sale of divers Manors, &c. in the County of K.  
for the joint Lives of the Tenant in Tail and Bargainee,  
that a Common Recovery may be suffered thereof to the  
Use of the Tenant in Tail in Fee.*

*\*\*\* This may be considered as one of the most simple  
forms, and adapted to all cases not attended with special  
circumstances.*

*The alteration from a bargain and sale to a release ground-  
ed on a lease for a year, may be easily made.*

THIS INDENTURE of three parts made the  
27th day of November, 46th George III. A. D.  
1805, between G. P. of &c. Esq. of the first part;  
J. W. of &c. gentleman, of the second part; and  
T. R. S. of the same place, gentleman, of the third  
part. *Whereas* the said G. P. is under and by  
virtue of the last will and testament of C. P. Esq.  
deceased, his late father, bearing date on or about  
the 23d day of June 1789, and certain codicils  
thereto annexed, all proved in the Prerogative  
Court of the Archbishop of Canterbury on or  
about the            day of            instant, or some  
or one of them, seised of an estate-tail in possession  
of the manors, messuages, farms, lands, tene-  
ments, and hereditaments hereinafter bargained  
and sold, or otherwise assured, or intended so  
to be, with their rights, members, and appurte-

nances; *Now this indenture witnesseth* that for docking, barring, and destroying all estates-tail of and in the manors, messuages, farms, lands, tenements and hereditaments hereinafter bargained and sold, or otherwise assured, or intended so to be, and all reversions or remainders expectant or depending on the same estates-tail, and for settling and assuring the same manors, messuages, farms, lands, tenements, and hereditaments, *to the use* of the said G. P. his heirs and assigns for ever; and in consideration of ten shillings of lawful money of the united kingdom of Great Britain and Ireland current in Great Britain to the said G. P. well and truly paid by the said J. W. immediately before the execution of these presents; the receipt whereof is hereby acknowledged, he the said G. P. *hath* granted, bargained, and sold, and by these presents *doth* grant, bargain, and sell, unto the said J. W. *all* and singular the manors, messuages, farms, lands, tenements, and hereditaments, situate, lying, and being in the towns, places, or parishes of C. C. D. O. S. W. S. A. K. K. H. C. K. E. otherwise E. S. F. and R. in the said county of K. or any of them, of which the said G. P. is tenant for an estate-tail either at law or in equity under or by virtue or means of the last will and testament of the said C. P. his deceased father, or any codicil or codicils thereto, or under or by virtue or means of any other will, deed, or settlement whatsoever, and every part and parcel of the same. *And* all and singular messuages, farms, cottages, houses, outhouses, edifices, buildings, stables, barns, coach-houses, dove-cotes, yards,

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gardens, orchards, backsides, tofts, crofts, lands, meadows, pastures, heaths, moors, marshes, wastes, waste-grounds, folds, fold-courses, and liberty of foldage, feedings, parks, warrens, commons, common of pasture, common of turbary, mines, minerals, quarries, mills, mulctures, fairs, markets, customs, tolls, duties, furzes, trees, woods, underwoods, and the ground and soil thereof, mounds, fences, hedges, ditches, freebords, ways, waters, water-courses, lands covered with water, fishings, fisheries, fowlings, courts leet, courts baron, and other courts, perquisites and profits of courts, view of frank-pledge, and all that to view of frank-pledge doth belong, reliefs, herriots, fines, sums of money, amerciaments, goods and chattels of felons and of fugitives, and of felons of themselves, and of outlawed persons, deodands, waifs, estrays, chief-rents, quit-rents, rent-charges, rents seck, rents of assize, fee farm rents, boons, services, royalties, jurisdictions, franchises, liberties, privileges, easements, profits, commodities, emoluments, hereditaments, and appurtenances whatsoever to the said manors, messuages, farms, lands, tenements, and hereditaments respectively, hereby bargained and sold, or otherwise assured, or intended so to be, or any of them respectively, belonging or in any wise appertaining, or with the same or any of them respectively, now demised, leased, held, used, occupied, or enjoyed, or accepted, reputed, deemed, taken, or known as part, parcel, or member of them or any of them, or appurtenant thereunto, with their and every of their appurtenances, and the reversion and reversions, remainder and re-

mainders, yearly and other rents and profits of the said manors, messuages, farms, lands, tenements, and hereditaments, hereby bargained and sold, or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, *to have and to hold* the said manors; messuages, farms, lands, tenements, hereditaments, and all and singular other the premises hereby bargained and sold, or otherwise assured or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, unto and to the use of the said J. W. and his assigns for and during the joint natural lives of the said G. P. and J. W. *to the intent* that the said J. W. may be tenant of the freehold of all and singular the said manors, messuages, farms, lands, tenements, and hereditaments, hereby bargained and sold, or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, *to the end* that one or more good and perfect common recovery or recoveries with double voucher may be had and suffered of the same lands and hereditaments; and for that purpose it is hereby directed, declared, and agreed, by and between all the said parties to these presents, that the said J. W. shall permit and suffer the said T. R. S. or some other person or persons, at the costs and charges in all things of the said G. P. his heirs, executors, or administrators, at any time or times hereafter to sue forth and prosecute against him the said J.

W. out of his majesty's high court of Chancery, one or more writ or writs of entry, *sur disseisin en le post*, returnable before his majesty's justices of the court of Common Pleas at Westminster, and thereby demand of the said J. W. the manors, messuages, farms, lands, tenements, hereditaments, and premises hereby bargained and sold, or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, by such apt, good, sufficient, and proper names, number of messuages and acres, quantities, qualities, and other descriptions as shall be deemed necessary, proper, sufficient, and requisite to comprise the same. And that the said J. W. shall in his own person, or by his attorney or attorneys lawfully authorised in that behalf, appear to the same writ or writs, and vouch to warranty the said G. P. and the said G. P. shall in his own person, or by his attorney or attorneys lawfully authorised in that behalf, appear gratis, and freely enter into the warranty of the said J. W. and, taking the same upon himself, vouch over to warranty the common vouchee of the said court of Common Pleas for the time being, who shall appear gratis, and freely enter into the warranty of the said G. P. and after imparlance make default, so that judgment may be given upon the said writ or writs and every of them for the said T. R. S. or other demandant or demandants, to recover all and singular the said manors, messuages, farms, lands, tenements, and hereditaments, hereby bargained and sold, or otherwise assured, or intended so to be, and every



part and parcel of the same, with their and every of their rights, members, and appurtenances by such names, quantities, qualities, and other descriptions as aforesaid, against the said J. W. and for the said J. W. to recover in value against the said G. P. and for the said G. P. to recover in value against the common vouchee, as is usual in such cases: and that upon all and every recovery and recoveries to be suffered as aforesaid, execution may be sued and prosecuted by and seisin had, taken, and delivered unto the said T. R. S. or other demandant or demandants accordingly; and that every other act or thing needful, requisite, or proper to be done or executed for the purpose of suffering and perfecting a common recovery or recoveries of the manors, messuages, farms, lands, tenements, and hereditaments hereby bargained and sold, or otherwise assured, or intended so to be, with double, treble, or other voucher, to bar the estate-tail of the said G. P. of and in the same manors, messuages, farms, lands, tenements, and hereditaments, and all reversions and remainders over and expectant upon the same estate-tail may be made, done, and executed. *And* by way of direction and declaration, and not of covenant, it is hereby granted, declared, and agreed, by and between the said parties to these presents as far as they respectively are interested, and they hereby for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, consent and agree according to their respective estates, rights, and interests in the premises, that the recovery hereby agreed to be suffered shall be

suffered and perfected with all possible dispatch, and that they respectively, and their respective heirs, will, on their respective parts, use their utmost endeavours to give effect to the same recovery and also these presents, and the grant, bargain, and sale, or other assurance hereby made; *and* it is hereby further directed, declared, and agreed, by and between all the said parties to these presents, as far as they respectively have any right, title, or interest in the premises, that immediately upon and after judgment obtained, and seisin had and taken upon such recovery or recoveries as aforesaid, the recovery or recoveries so as aforesaid, or in any other manner, or at any other time or times to be suffered, and also these presents, and the assurance hereby made, and all and every other fine and fines, recovery and recoveries, and other assurances whatsoever, at any time or times heretofore, and to be at any time, and from time to time hereafter had, made, done, levied, suffered, executed, and perfected of or concerning all or any part of the said manors, messuages, farms, lands, tenements, and hereditaments hereby bargained and sold, or otherwise assured, or intended so to be, either by themselves solely and alone, or jointly and together with any other lands, tenements, and hereditaments, by or between all and every, or any or either of the persons who are parties to these presents, or to which they or any or either of them is or are, or shall or may be parties or privies, or a party or privy, shall, as to all the said parties to these presents respectively, as far as they respectively can law-

fully or rightfully direct the uses of the same fine or fines, common recovery or recoveries, and other assurances, be and enure, and be adjudged, expounded, deemed, decreed, and taken to be and enure, and that the same was and were meant and intended, and is and are hereby directed and declared to be and enure; *and also* that the person or persons to whom the said fine or fines, common recovery or recoveries, and other assurances respectively, have or hath been, or shall or may be levied, suffered, made, and executed, shall stand and be seised, *as*, to, for, and concerning the said manors, messuages, farms, lands, tenements, and hereditaments, hereby bargained and sold, or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, *To the use* of the said G. P. his heirs and assigns for ever, and to no other use, nor upon or for any other trust, intent, or purpose whatsoever. *In witness, &c.*

## FORM VIII.

*Recovery Deed, by Lease and Release, with various Uses  
by Way of Family Arrangement.*

THIS INDENTURE of four parts, made &c. 1798, between C. H. of &c. Esq. and M. his wife, of the first part; G. S. of &c. Esq. of the second part; J. P. of &c. gentleman, of the third part; and W. W. of &c. Esq. of the fourth part: *Witnesseth* that for barring, docking, destroying, and extinguishing all estates-tail, and all reversions and remainders thereupon expectant or depending of and in the manors, lands, and hereditaments hereinafter granted and released, or mentioned so to be, and for extinguishing the dower, right, or title of dower of the said M. H. therein and for limiting and assuring the same manors, lands, and hereditaments, to the uses hereinafter particularly mentioned and expressed, and in consideration of ten shillings of lawful money of &c. to the said C. H. paid by the said G. S. at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged; they the said C. H. and M. his wife, *have* and each of them *hath* granted, bargained, sold, released, and

confirmed, and by these presents *do* and each of them *doth* grant, bargain, sell, release, and confirm unto the said G. S. his heirs and assigns, *All* those the lordships or manors of W. E. and N. in the county of W. with their and every of their rights, royalties, franchises, members, and appurtenances, *and* also all those the two several manors, or reputed manors of Great C. in the said county of W. the one called V. and the other W. G. with their and every of their rights, royalties, franchises, members, and appurtenances; *and* also the advowson, donation, right of presentation, and patronage of the churches of Great C. and B. in the said county of W. with all rights, privileges, and appurtenances thereunto belonging; *and* also the capital or chief mansion-house of W. aforesaid; *and* also all other the manors, messuages, farms, lands, meadows, leasows, pastures, grounds, mills, fishings, tithes, commons, donations, rents, hereditaments, duties, reliefs, waifs, estrays, deodands, and all other the hereditaments whatsoever of him the said C. H. situate, lying, and being in the manors, townships, parishes, precinets, and liberties of W. E. N. Great C. Little C. P. W. and B. in the county of W. or in any of them, or elsewhere in the said county of W. *together* with all and singular houses, outhouses, edifices, buildings, barns, stables, dovehouses, orchards, gardens, backsides, privileges, profits, commodities, emoluments, and hereditaments whatsoever to the said several manors, lands, hereditaments, and premises belonging, or in any wise appertaining, or accepted, reputed, taken, or known as part, parcel, or member

thereof, (except, nevertheless, and always reserved out of this present release, two messuages, and two yard lands, and a toft of land in the said parish of E. which are copyhold, and held by grant from the Dean and Chapter of W. for three lives. In trust for the said C. H.) *All* which manors, lands, hereditaments, and premises, (except as before excepted), are now in the actual possession of the said G. S. by virtue of a bargain and sale thereof made to him by the said C. H. and M. his wife, for the term of one whole year, in consideration of five shillings paid to the said C. H. and M. his wife, by the said G. S. by indenture bearing date the day next before the day of the date, and executed before the execution of these presents, and by force of the statute made for transferring uses into possession, and were devised to the said C. H. in tail, (after several estates now determined,) in or by the last will of his father E. H. formerly of W. H. aforesaid, Esq. deceased, bearing date on or about the eleventh day of January 1766, and proved in the Prerogative Court of the Archbishop of Canterbury on or about the fifth day of May next following: *And* the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits thereof, and of every part thereof, *and* all the estate, right, title, interest, trust, property, claim, and demand whatsoever at law and in equity of them the said C. H. and M. his wife of, in, to, or out of the said manors, lands, hereditaments, and premises, every, or any part or parcel thereof, *to have and to hold* the said manors, lands, hereditaments,

and all and singular other the premises with their and every of their appurtenances unto the said G. S. his heirs and assigns for ever, *to the use of the said G. S. his heirs and assigns for ever, to the intent* that the said G. S. may be perfect tenant of the freehold of the same manors, hereditaments, and premises, to the end that one or more good and perfect common recovery or recoveries may be thereof had and suffered in manner hereinafter mentioned; for which purpose it is hereby declared and agreed by and between the said parties to these presents, as far as they respectively are interested, that it shall and may be lawful to and for the said J. P. at the costs and charges of the said C. H. before the end of this present Easter term, to sue forth and prosecute out of his majesty's high court of Chancery, against the said G. S. one or more writ or writs of entry *sur disseisin en le post*, returnable before his majesty's justices of the court of Common Pleas at Westminster, and thereby demand by apt and convenient names, quantities, qualities, number of acres and other descriptions, the said manors, lands, hereditaments, and premises, with the appurtenances, *to which said writ or writs of entry the said G. S. shall appear gratis in his own person, and vouch to warranty the said C. H. and M. his wife, who shall also appear gratis in their own persons, or by their attorney or attorneys thereto lawfully authorised, and enter into the warranty, and vouch over to warranty the common vouchee of the same court, who shall also appear gratis, and after imparlance make default, so that judgment may be*

given for the said J. P. to recover the same manors, lands, hereditaments, and premises, with the appurtenances, against the said G. S. and for the said G. S. to recover in value against the said C. H. and M. his wife, and for the said C. H. and M. his wife to recover in value against the common vouchee, as is usual in like cases; and that execution shall and may be thereupon had and awarded accordingly, and all and every other act and thing done and executed which is needful and requisite for suffering and perfecting such common recovery or recoveries with vouchers as aforesaid; And it is hereby declared and agreed by and between all the said parties to these presents, as far as they respectively are interested, that immediately after suffering and perfecting the said common recovery or recoveries, as well these presents as the assurance hereby made, as also the said recovery and recoveries so as aforesaid or in any other manner or at any other time or times suffered or to be suffered, and all and every other recovery and recoveries, fine and fines, conveyances and assurances in the law whatsoever at any time or times heretofore, and to be at any time, and from time to time hereafter had, made, levied, suffered, or executed of the said manors, lands, hereditaments, and premises, or any part thereof, by or between the said parties to these presents, or any of them, or whereunto they, or any or either of them are, or is, or shall be parties or privies, or a party or privy, shall be and enure, and shall be adjudged, deemed, construed, and taken, and is and are, and was and were meant and intend-



ed, and is and are hereby directed, declared, and agreed by and between all the said parties to these presents, to be and enure, and the recoveror and recoverors in the said recovery or recoveries, named or to be named, and his and their heirs shall stand and be seised *as, to, for,* and concerning the same manors, lands, hereditaments, and premises, and of every part thereof, with the appurtenances to, for, and upon such uses, intents, and purposes, and under and subject to such powers, provisoes, limitations, and agreements as are hereinafter expressed and declared of and concerning the same, (that is to say,) in the first place in confirmation of the right of E. H. eldest sister of the said C. H. to have, take, and receive thereout the clear annual sum of £        to commence from the fifth day of January now last past, and to continue thenceforth during so long time as she the said E. H. shall live in the said mansion-house at W. in which she now resides, and also in confirmation of the right of the said E. H. if she shall quit the said mansion-house, and go to reside elsewhere, to have, take, and receive thereout the clear annual sum of £        to commence from the time of her so quitting the said mansion-house and to continue during the term of her natural life, instead of the aforesaid annual sum of £        which said annuities or yearly rent charges of £        and £        were granted, created, and made payable in and by one indenture tripartite bearing date on or about the        day of January last, made between the said C. H. of the first part; the said E. H. of the second part; and the said W. W.

of the third part ; *and* also in confirmation of such powers of distress and entry for nonpayment of the said annuities, as in the same indenture are for that purpose particularly mentioned and expressed, and subject nevertheless to, and charged and chargeable with the said annuities of £ and £ during the continuance of the same annuities respectively, *and* also subject to and chargeable with the powers and remedies limited or given to the said E. H. and her assigns for securing and enforcing the payment of the same annuities *to the use* of the said C. H. and his assigns for and during the term of his natural life, without impeachment of waste, and from and after the decease of the said C. H. *to the use* of the said M. H. for and during the joint natural lives of the said M. H. and E. H. *And* in case the said M. H. shall die in the life-time of the said E. H. and the said E. H. shall survive the said C. H. then from and after the several deceases of the said C. H. and M. his wife, *to the use*, intent, and purpose that the said E. H. shall thenceforth during the term of her natural life have, receive, take, and enjoy one annual sum or yearly rent charge of £ of lawful money, &c. to be yearly issuing and payable out of, and charged and chargeable upon all and singular the said manors, lands, and hereditaments hereby released, or otherwise assured, or intended so to be, and to be payable and paid to the said E. H. and her assigns at or in the common dining hall of the Inner Temple, London, on the 5th day of April, the 5th day of July, the 10th day of October, and the 5th day

of January, by even and equal portions, without any deduction or abatement whatsoever thereout or out of any part thereof for or in respect of any taxes, charges, rates, impositions, or outgoings whatsoever, at any time or times heretofore, and to be at any time and from time to time hereafter taxed, charged, assessed, or imposed on the said manors, lands, and hereditaments, hereby released, or otherwise assured, or intended so to be, or any of them, or any part thereof, or on the said annual sum or yearly rent charge of £            or any part thereof, or on the said E. H. or her assigns in respect of the same, either by authority of Parliament or otherwise, or for or in respect of any other matter, cause, or thing whatsoever; the first payment of the said annual sum or yearly rent charge of £            to become due and be made on such of the said days of payment as shall happen next after the decease of the survivor of the said C. H. and M. his wife, and the same annual sum or yearly rent charge to be in lieu and full satisfaction and discharge of the then growing and also the future payments of the said annual sums or yearly rent charges of £            and £            and each or either of them, and also in full satisfaction and discharge of any claim, annuity or annuities, to which the said E. H. is or can or may be intitled under the said will of the said E. H. And in case the said E. H. shall die in the life-time of the said M. H. and the said M. H. shall survive the said C. H. then from and after the several deceases of the said C. H. and E. H. *to the use*, intent, and purpose that the said M. H. shall thenceforth during the

term of her natural life, have, receive, take, and enjoy one annual sum or yearly rent charge of £            of lawful money, &c. to be yearly issuing, going, and payable out of, and charged and chargeable upon all and singular the said manors, lands, and hereditaments hereby released, or otherwise assured, or intended so to be, and to be payable and paid to the said M. H. or her assigns at or in the common dining hall of the Inner Temple, London, on the fifth day of April, the fifth day of July, the tenth day of October, and the fifth day of January, by even and equal portions, and without any deduction or abatement on any account whatsoever as aforesaid, the first payment of the said last mentioned annual sum or yearly rent charge of £            to become due, and to be made on such of the said last mentioned days of payments as shall happen next after the decease of the survivor of the said C. H. and E. H. and the same annual sum or yearly rent charge of £            together with the estate hereby limited to the use of the said M. H. for the joint lives of the said M. H. and E. H. to be in full satisfaction for the dower and thirds at common law, and also the freebench and customary estate, and all other estates, claims, and demands which the said M. H. hath or can, shall or may claim to, have, of, in, to, and out of all freehold, copyhold, and customary estates of which the said C. H. hath been, or shall or may be seised at any time and from time to time during the coverture of the said M. H. by him. *And to this further use, intent, and purpose, that when and as often as it shall happen that the said annual sum or yearly rent-charge of*

£        hereby limited to the use of the said E. H. and her assigns, or the said annual sum or yearly rent charge of £        hereby limited to the use of the said M. H. and her assigns, or any quarterly payment of the same, respectively shall be in arrear, or unpaid in the whole, or in part by the space of fourteen days next over or after any one of the days or times whereon the same respectively are hereinbefore appointed to be paid, as aforesaid; *then*, and so often from time to time it shall, and may be lawful to, and for the said E. H. and her assigns, in respect of her said annual sum, or yearly rent of £        and to and for the said M. H. and her assigns in respect of her annual sum or yearly rent of £        into and upon the said manors, messuages, lands, and hereditaments, out of which the same annual sums or yearly rents of £        and £        respectively are to be issuing and payable, or into and upon any part thereof to enter and distrain for the same annual sums, or yearly rents respectively, and all the arrears thereof respectively, and the distress and distresses then and there found to detain, manage, sell, and dispose of, in the same manner in all respects, and upon the same terms as distresses for rents reserved upon leases for years may be, and are or ought to be detained, managed, sold, and disposed of, and as if the said annual sums, or yearly rents of £        and £        respectively were rents reserved upon leases for years, *to the intent* that the said E. H. and her assigns, and also the said M. H. and her assigns, shall thereby, therewith, or otherwise be respec-

tively and fully satisfied, and paid the said annual sums, or yearly rents of £        and £        and all the arrears thereof respectively, and all costs, charges, and expences, to be occasioned to them respectively by the nonpayment thereof at the days or times hereinbefore appointed for the payment of the same respectively. *And to this further use, intent, and purpose, that from time to time when, and as often as it shall happen that the said annual sums, or yearly rents of £        and £        or any part of the same respectively shall be in arrear or unpaid by the space of twenty-one days next, over or after any or either of the said days whereon the said sums, or rents respectively are hereinbefore appointed to be paid, as aforesaid; then, and so often, and from time to time, and either upon or at any time after the expiration of the said twenty-one days; it shall and may be lawful to and for the said E. H. and her assigns, and to and for the said M. H. and her assigns, (although no formal or legal demand shall have been made of the said annual sums, or yearly rents of £        and £        respectively,) into and upon the said manor, messuages, lands, and hereditaments, out of which the said annual sums, or yearly rents are to be issuing and payable as aforesaid, or into and upon any part of the same manor, messuages, lands, and hereditaments, in the name of the whole of the same to enter, and the same to have, hold, and enjoy, and the rents and profits thereof, and of every part thereof to receive and take to and for their own use and benefit until they respectively shall there*

by or therewith, or otherwise be fully satisfied and paid the said annual sums or yearly rents of £            and £            secured to them respectively and all the arrears thereof respectively, and also so much of the same annual sums, or yearly rents respectively as from time to time shall incur and grow due to them respectively during such time as they respectively shall continue in possession of the premises after every such entry as aforesaid, and also all such costs, losses, charges, damages, and expences, as shall be occasioned by nonpayment of the said annual sums or yearly rents, or of any part thereof at the days and times aforesaid, and such possession, when taken to be without impeachment of waste, and from and after the determination of the estate hereby limited to the use of the said C. H. and his assigns for his life, and to the said            during the joint lives of the said M. H. and E. H. and subject nevertheless to the said annual sums, or yearly rent charges of £            and £            provided for the said E. H. and M. H. respectively as aforesaid, and to the powers and remedies hereby given, limited, and conferred for securing and enforcing the payment of the same respectively, *to the use* of the said W. W. his executors, administrators, and assigns, for and during the term or time of two hundred years to be computed from the day next before the day of the date of these presents, and fully to be complete and ended without impeachment of or for any manner of waste, *upon the trusts*, nevertheless, and for the ends, intents, and purposes hereinafter expressed, declared, and

contained of and concerning the same term, and from and after the determination of the said term of two hundred years, and in the mean time subject thereto, and to the trusts thereof, \* *To the use* of such person or persons, for such estate and estates, and for such interest and interests, by way of legacy, annuity, rent-charge, or otherwise, and in such manner, parts, shares, and proportions, and upon such trusts, and for such ends, intents, and purposes, and charged and chargeable in such manner, and either absolutely or conditionally, and subject to such powers of revocation and of new appointment, and other powers, provisoes, conditions, restrictions, limitations, declarations, and agreements, as the said C. H. party hereto, at any time or times, and from time to time by any deed, or deeds, instrument or instruments in writing, to be sealed and delivered by him in the presence of, and attested by two or more credible witnesses, shall direct, limit, or appoint; and in default of such direction, limitation, and appointment, and in the mean time, and from time to time, until the same shall take effect, and from time to time subject to such uses, estates, trusts, charges, and interests as shall have been directed, limited, or appointed by the said C. H. *To the use* of C. H. son of C. H. late of &c. Esq. deceased, for and during the term of his natural life, without impeachment of waste; and from and after the determination of that estate by any

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\* Sometimes it may be advisable that a joint power shall precede the other uses.



means in his life-time, *to the use* of the said G. S. and his heirs, during the natural life of the said C. H. the son, *upon trust* to support and preserve the contingent uses and estates hereinafter limited from being defeated or destroyed, and for that purpose to make entries and bring actions, as the case shall require, yet nevertheless to permit and suffer the said C. H. the son, and his assigns, during his life to receive and take the rents and profits of the same manor, lands, and hereditaments, to and for his and their own use and benefit, and from and after the decease of the said C. H. the son, *then to the use* of the first son of the body of the said C. H. the son lawfully begotten, or to be begotten, and the heirs male of the body of such first son lawfully issuing; and on failure of such issue *to the use* of the second, third, fourth, fifth, and all and every other, son and sons of the body of the said C. H. the son lawfully begotten and to be begotten severally and successively in remainder, one after the other, as they and every of them respectively shall be in seniority of age and priority of birth, and the several and respective heirs male of the body, or several and respective bodies of the same son and sons respectively, lawfully issuing, every elder of the same sons, and the heirs male of his body issuing being always to be preferred to, and to take before every younger of the same sons, and the heirs, male of his body issuing; and on failure of such issue, *to the use* of the person or persons who at the death of the survivor of the said C. H. party hereto, and C. H. the son, shall be the heir, or

co-heirs of the said C. H. party hereto, and the heirs, or assigns of the same person or persons respectively to be divided between the same persons, if more than one, as tenants in common, and not as joint-tenants, and in the same shares and proportions, either equally or unequally, as they would have been intitled to a real estate descending from the said C. H. party hereto, and vesting at that time in them as his co-heirs. *And it is hereby declared and agreed, by and between the parties to these presents, that the said term of two hundred years hereby limited to the use of the said W. W. his executors, administrators, and assigns is limited to him and them upon the several trusts, and for the several ends, intents, and purposes hereinafter expressed and declared of and concerning the same, (that is to say) upon trust for securing to the said E. H. and M. H. respectively and their respective assigns, the due and regular payment of the said annual sums or yearly rents of £        and £        hereby limited to the use of the said E. H. and M. H. respectively, when and as the same respectively shall become due and payable, and for that purpose in ease, and when and as often as the said annual sums or yearly rents of £        and £        respectively, or any payment thereof respectively shall be in arrear and unpaid in the whole, or in part by the space of twenty-eight days next after any one of the days or times hereinbefore appointed for the payment thereof respectively, then and in that case, and from time to time as often as it shall so happen, it shall and may be lawful to and*

for the said W. W. his executors, administrators, or assigns, by and out of the rents, issues, and profits of the said hereditaments and premises hereby limited to the use of the said W. W. as aforesaid, for the said term of two hundred years, by mortgage or sale of the said hereditaments and premises, or of a competent part thereof, for all or any part of the said term of two hundred years, or by bringing actions against or making distresses, upon all and every or any of the present or future tenants of the said hereditaments, and premises for the recovery of the rents then in arrear, or by making entries upon the same hereditaments and premises, or by all and every or any one or more of the said ways and means, or by any other lawful and reasonable ways and means whatsoever, to levy and raise such arrears of the said annual sums or yearly rents of £            and £            as from time to time shall become due, and remain unpaid together with all such damages, costs, charges, and expences, as the said E. H. and M. H. respectively or their respective assigns shall incur, expend, sustain, or be put unto by reason of the nonpayment of the said annual sums or yearly rents of £            and £            respectively, or any part thereof respectively, together with the costs, charges, and expences attending the execution of the trusts of the said term of two hundred years; *And upon this further trust* that the said W. W. his executors and administrators do and shall in the first place retain and reimburse to and for himself, and themselves, the costs, charges, and expences of and attending the execution of the trusts hereby reposed in him or them; *And in the*

next place pay and satisfy to the said E. H. her executors, administrators, or assigns, all arrears of her said annual sum or yearly rent of £ and all costs, charges, damages, and expences which she and they shall have incurred, suffered, borne, sustained, and laid out by reason or on account of the nonpayment of her said annual sum, or yearly rent of £ or in or about recovering and enforcing the payment of the same, and afterwards do and shall pay and satisfy to the said M. H. her executors, administrators, and assigns, all arrears of her said annual sum or yearly rent of £ and all costs, charges, damages, and expences which she and they shall have incurred, suffered, borne, sustained, and laid out by reason or on account of the nonpayment of the said last mentioned annual sum or yearly rent of £ or in, or about recovering and enforcing the payment of the same; *And upon this further trust*, that after the determination of the several estates hereby limited to the use of the said C. H. party hereto for his life, and to the said M. H. for the joint lives of herself, and the said E. H. and thenceforth until the said C. H. the son shall attain his age of twenty-five years, or the time shall arrive when he would have attained that age in case he had lived, (and subject and without prejudice to the power of appointment hereinbefore contained) he the said W. W. his executors, administrators, or assigns, do and shall receive all the rents and annual income of the said manor, lands, hereditaments, and premises comprised in the said term of two hundred years, which shall remain after satisfying the said several annuities of £ and £ du-

ring the continuance of the same annuities respectively, and do and shall apply the same surplus rents in keeping down the interest of the incumbrances (if any) then affecting the premises, and also in discharging so much and such part of the principal monies of the same incumbrances as can be satisfied out of any rents which shall remain after discharging such interest as aforesaid: *And upon this further trust* that after the said C. H. the son shall have attained the age of twenty-five years, or the time shall arrive when he, if living, would have attained that age, and thenceforth in the mean time and until the said annual sums or yearly rents of £            and £            or one of them, or some quarterly payment of them or one of them shall be in arrear or unpaid in the whole or in part by the space of twenty-eight days after the time hereby appointed for the payment of the same; and also thenceforth and from time to time when and as often as all the arrears of the said annual sums or yearly rents of £            and £            or such of them as shall be subsisting, and the said costs, charges, damages, and expences, shall be raised or fully satisfied and paid the said W. W. his executors and administrators, do and shall permit and suffer such person or persons as for the time being shall be entitled to the reversion or remainder of the same hereditaments and premises comprised in the said term of two hundred years, expectant on the determination of the same term, to receive and take the rents and profits of the same hereditaments and premises to and for his and their own use and benefit. *And upon this further trust* that the said

W. W. his executors and administrators do and shall from time to time after paying the said annual sums or yearly rents of £            and £            when and as the same respectively shall become due and payable, and also after the said C. H. the son shall attain his age of twenty-five years, or the time when he, if living, would have attained that age; and also after paying, deducting, and retaining such costs, charges, damages, and expences as aforesaid, pay to the person or persons who shall be entitled to the reversion or remainder of the said hereditaments and premises comprised in the said term of two hundred years, expectant on the determination of the said term, or to whom he, she, or they shall direct or appoint the money (if any) which from time to time shall remain in the hands of the said W. W. his executors or administrators: *Provided always*, and it is hereby declared and agreed, by and between the parties to these presents, that after the decease of the survivor of the said E. H. and M. H. and payment to them respectively, and their respective executors, administrators, or assigns of the said annual sums or yearly rents of £            and £            and all the arrears thereof respectively; and also after the said C. H. the son shall have attained his age of twenty-five years, or the time shall arrive when he, if living, would have attained that age, and payment of all costs, charges, damages, and expences as aforesaid, and also after full performance or discharge of the trusts of the said term of two hundred years, then and thenceforth the said term of two hundred years of or in the hereditaments and premises comprised therein or

so much of the same term as shall not be disposed of under the trusts hereby declared concerning the same term, shall cease, determine, and be void, but without prejudice to any sale, mortgage, or disposition previously made of all or any part of the hereditaments and premises comprised in the said term of two hundred years for any of the purposes hereinbefore mentioned, in pursuance of the trusts hereinbefore declared concerning the same term: *And* it is hereby provided, declared, and agreed, by and between the parties to these presents, and the said C. H. party hereto, doth hereby direct and appoint, that the person or persons who shall pay to the said W. W. his executors, administrators, or assigns, all or any part of the rents, issues, and annual profits of the said manor, lands, and hereditaments hereby released, or otherwise assured, or intended so to be, or advance any money upon any sale or sales, or the security of any mortgage or mortgages of the same manor, lands, and hereditaments, or any part of the same, or otherwise pursuant to the trusts hereinbefore contained, shall not be obliged or required, to see the application of the said rents, issues, profits, and money respectively, or any of them, or be answerable or accountable for the misapplication or non-application of the same, and that all receipts which shall be given by the said W. W. his executors or administrators for all or any part of the said rents, issues, profits, and money respectively, shall be good and sufficient acquittances and discharges for the sum and sums of money which by the said receipts respectively, and every of them, shall be acknowledged or expressed to be, or to have been

received; and that all sales and mortgages which shall be made, and contracts for sale which shall be entered into, and conveyances which shall be executed by the said W. W. his executors or administrators, shall, without any further consent or concurrence by or on the part of the person or persons who for the time being shall be intitled in reversion or remainder as aforesaid, be binding and conclusive on them respectively, in the same manner to all intents and purposes as if such sales or mortgages had been made, and contracts for sale entered into, and conveyances executed by him or them respectively: *Provided always* and it is hereby declared and agreed, by and between the parties to the sepresents, that notwithstanding any of the uses hereinbefore declared, or the powers hereinafter contained, but subject and without prejudice to any of the said annuities during the continuance of the same respectively; and also subject and without prejudice to the said powers and remedies by distress and entry for recovering and enforcing the payment of the same annuities, it shall or may be lawful to and for the said C. H. party hereto during his life, and after his decease to and for the said M. H. during the joint lives of herself and the said E. H. and after the determination of their several estates, to and for the said C. H. the son, during his life, and also to and for the guardian or guardians for the time being of any infant son of the said C. H. the son, who for the time being shall be tenant in tail in possession under the limitations hereinbefore contained during the minority of the same son, by indenture or



indentures to be sealed and delivered by him, her, or them respectively, in the presence of and attested by two or more credible witnesses, to limit and appoint by way of demise or lease, all or any part or parts of the said manor, lands, hereditaments, and premises hereby released, or otherwise assured, or intended so to be, with the appurtenances, to any person or persons for any term or number of years not exceeding twenty-one years, to take effect in possession, and not in reversion, or by way of future interest, so as there shall be reserved on every such limitation or appointment by way of demise or lease, the best or most improved yearly rent or rents, to be incident to the immediate reversion of the hereditaments so to be limited or appointed, that can or may be reasonably had or gotten for the same, without taking any fine, premium, or foregift, for making thereof, and so as there shall be contained in every such indenture of limitation or appointment by way of demise or lease, a condition of re-entry for non-payment of the rent or rents, to be thereby respectively reserved by the space of twenty-one days after the same rents respectively shall become due and payable, and so as the person or persons respectively to whom such limitations or appointments by way or in the nature of demise or lease shall be respectively made, shall execute counterparts of the indenture or indentures to be made to him, her, or them respectively, and thereby covenant for the due payment of the rent or rents, to be thereby respectively reserved, and so as the person or persons respectively to whom

such limitations or appointments shall be made his, her, or their executors, administrators, or assigns, shall not by any clause or words to be contained in any such indenture or indentures, be made punishable for waste, or exempted from punishment for committing waste: *Provided also*, and it is hereby declared and agreed by and between the parties to these presents, that subject and without prejudice to the said power of leasing, but notwithstanding any of the uses, estates, or charges hereby limited or created, (except the leases to be made as aforesaid) it shall or may be lawful to and for the said E. H. by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by her in the presence of two or more credible witnesses, and to be attested by the same witnesses, or by her last will and testament in writing, or any writing in the nature of her last will and testament, or any codicil or codicils thereto, to be respectively signed, published, and declared by the said E. H. in the presence of three or more credible witnesses, and to be attested in her presence by the same witnesses, to raise any sum or sums of money not exceeding £ for the benefit of any person or persons, by charging the same on all or any of the hereditaments mentioned or comprised in the said indenture of the day of January last (being part of the hereditaments, hereby released, or otherwise assured, or intended so to be), and that for securing such money with interest for the same at any rate not exceeding £5 per cent. per annum, it shall or may be lawful to and for the said E. H. by the same deed

or deeds, instrument or instruments, will or wills, codicil or codicils, or by any other deed or deeds, instrument or instruments in writing, or by her last will and testament in writing, or any writing in the nature of her last will and testament, or any codicil or codicils thereto, to be executed and attested as aforesaid, to limit and appoint the hereditaments so to be charged to any person or persons whomsoever for any term or terms of years, whatsoever, so as the estate or estates to be limited or appointed as aforesaid, shall be made subject to redemption on payment at an appointed day or time of the money so to be charged, and the interest thereof by the person or persons who shall be intitled to the same hereditaments in remainder or reversion immediately expectant upon the expiration of the same term or terms of years respectively: *Provided also*, and it is hereby further declared and agreed by and between the parties to these presents, that subject and without prejudice to the said power of leasing, and also subject and without prejudice to the power hereby given to the said E. H. to raise any sum not exceeding £ as aforesaid, and to the term of years, if any, which shall be limited under and by virtue of that power, and notwithstanding any other of the uses, estates, or charges hereby limited or created, it shall or may be lawful to and for the said C. H. party hereto, by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by him in the presence of two or more credible witnesses, and to be attested by the same witnesses, or by his last will and testament in writing or any

codicil or codicils thereto to be respectively signed, published, and declared by him in the presence of three or more credible witnesses, and to be attested in his presence by the same witnesses to raise any sum or sums of money not exceeding £ for his own benefit or the benefit of any other person or persons, by charging the same on all or any of the hereditaments hereby released, or otherwise assured, or intended so to be; and that for securing such money with interest for the same, it shall and may be lawful for the said C. H. party hereto, by the same deed or deeds, instrument or instruments, will or wills, codicil or codicils, or by any other deed or deeds, instrument or instruments in writing, or by his last will and testament, or any codicil or codicils thereto, (to be executed and attested as aforesaid), to limit and appoint the hereditaments, so to be charged by him the said C. H. party hereto as aforesaid, to any person or persons whomsoever for any term or number of years whatsoever, so as the estate or estates to be limited or created by the said C. H. party hereto as aforesaid, shall be made subject to redemption on payment at an appointed day, or time of the money and interest so to be charged by the said C. H. party hereto as aforesaid, by the person or persons who shall be entitled to the hereditaments to be comprised in the same term or terms respectively, in remainder or reversion, immediately expectant upon the expiration of the same term or terms of years respectively. *Provided further*, and it is hereby declared and agreed by and between the parties to these presents, that in case the full

amount of the said sum of £                      shall not be charged by the said C. H. party hereto, under the power hereby given or reserved to him in that behalf, then subject and without prejudice to the said annuities, and the several other powers hereinbefore contained, and the estates and interests which shall be limited, charged, or created under, and by virtue of the same powers ; but notwithstanding, any of the uses hereinbefore limited, it shall or may be lawful to and for the said M. H. either in the life time or after the death of her said husband, and notwithstanding her coverture, by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by her in the presence of two or more credible witnesses, and to be attested by the same witnesses, or by her last will and testament in writing, or any writing in the nature of, or purporting to be her last will and testament, or any codicil or codicils thereto, to be respectively signed, published, and declared by her in the presence of three or more credible witnesses, and to be attested in her presence by the same witnesses, either for her own benefit or the benefit of any person or persons whomsoever, to charge any sum or sums of money on all or any of the hereditaments hereby released, or otherwise assured or intended so to be, together with interest for the same, from or at any time after the death of the said C. H. party hereto, so as the principal sum or sums of money to be charged by the said M. H. shall not exceed £                      or together with, and inclusive of the principal money to be charged by the said C. H. party hereto, shall not exceed

[H]

the sum of £                      and that for securing the money to be charged by the said M. H. as aforesaid, with interest for the same, it shall or may be lawful to and for the said M. H. by the same deed or deeds, instrument or instruments, will or wills, writing or writings, codicil or codicils, or by any other deed or deeds, instrument or instruments in writing, will or wills, writing or writings, or codicil or codicils, to be executed and attested as aforesaid, to limit and appoint the hereditaments so to be charged by the said M. H. to any person or persons whomsoever for any term or terms of years whatsoever, so as the estate or estates to be limited or created by the said M. H. as aforesaid, shall be redeemable on payment at an appointed day or time of the money and interest so to be charged by the said M. H. as aforesaid, by the person or persons who shall be intitled to the hereditaments to be comprised in the same term or terms respectively in remainder or reversion immediately expectant on the determination of the same term or terms respectively. *And whereqs* either under the said will of the said E. H. or otherwise the said C. H. party hereto, is seised or intitled in equity to the said two messuages, and two yard lands and toft of land in the said parish of E. which are copyhold and held by grant from the Dean and Chapter of W. for the lives of J. C. the said C. H. the son, and J. W. *Now this indenture also witnesseth*, and it is hereby granted, declared, and agreed, and the said C. H. party hereto, doth hereby for himself, his heirs, executors, and administrators, covenant with the said

G. S. his executors, and administrators, that he the said C. H. party hereto, and his trustees shall or will at the next court, to be holden for the manor of which the said copyhold lands. are parcel, either in person, or by attorney, surrender into the hands of the lord or lords of the said manor according to the custom of the said manor, the said two copyhold messuages, yard lands, and toft of land, with the appurtenances, to the intent that the same may be regranted to the said G. S. and his heirs for the lives of the said J. C. C. H. the son, and J. W. to be held by copy of court roll, according to the custom of the same manor by the rents, suits, and services therefore due and of right accustomed to be paid ; and that in the mean time, and until such surrender shall be made, he the said C. H. party hereto, and his trustees shall stand and be seised or possessed of or intituled to the same copyhold lands and premises with the appurtenances upon the trusts and for the ends, intents, and purposes hereinafter expressed and declared of and concerning the same ; And it is hereby declared by and between the parties to these presents, that when and as soon as the said copyhold lands and premises shall be granted to the said G. S. his heirs and assigns, the said G. S. his heirs and assigns shall stand and be seised or possessed of, or intituled to the same *upon trust* for such person or persons for such estate and estates, and for such ends, intents, and purposes, and in such manner, and form, parts, shares, and proportions, as the said C. H. party hereto, either absolutely, or with or

without power of revocation and new appointment by any deed or deeds, instrument or instruments, in writing, under his hand and seal, to be attested by two witnesses, or by his last will and testament, in writing, or any codicil or codicils thereto, to be severally and respectively signed, published, and declared by him in the presence of two or more credible witnesses, and to be attested in his presence by the same witnesses shall direct or appoint, and for want of such direction or appointment, and in the mean time and until the same shall be made, and take effect, and subject to such interests as from time to time shall have been directed or appointed, then upon such trusts and for such ends, intents, and purposes as will correspond with the uses, trusts, ends, intents, and purposes, powers, provisos, declarations, and agreements hereinbefore limited, expressed, and declared of and concerning the manors, lands, and hereditaments hereby released, or otherwise assured or intended so to be; *And it is hereby further* provided, declared, and agreed by and between the parties to these presents, that in case the said W. W. or any trustee, who for the time being shall be appointed under this present provision in his place, shall depart this life, or be desirous of being discharged of and from the aforesaid trusts, or shall go to reside beyond seas, or shall neglect or refuse to act in the said trusts before the said trusts shall be fully executed and performed, then and in that case and as soon and as often as the same shall happen, it shall and may be lawful to and for the said C. H. party



hereto, his executors, or administrators to nominate any fit person to supply the place of the trustee so dying, desiring to be discharged or going to reside beyond seas, or refusing or neglecting to act as aforesaid; and that immediately after every such appointment, the said trust estates shall be conveyed, surrendered, assigned, and transferred, so and in such manner that the same may vest in such new trustee, and in his heirs, executors, administrators, and assigns, upon the trusts hereinbefore expressed and declared of and concerning the same respectively; and that every such new trustee shall have or may exercise the same powers, privileges, and authorities, as if he had been appointed a trustee by these presents, and as if his name had been inserted in these presents, instead of the name of the trustee hereby appointed; *and* it is hereby declared and agreed by and between all the parties to these presents, that the said trustee hereby nominated and appointed, and the trustee to be appointed in pursuance of the provision last hereinbefore mentioned, and the heirs, executors, administrators, and assigns of such trustee for the time being, shall be charged and chargeable only for such monies as he and they shall actually receive by virtue of the trusts hereby reposed in him and them; and shall not be answerable or accountable for any banker, goldsmith, broker, or other person or persons with whom or in whose hands any part of the said trust monies shall or may be deposited or lodged for safe custody, or otherwise in the execution of the trusts hereinbefore contained, nor for any other misfortune, loss, or da-

mage which may happen in the execution of the aforesaid trusts or in relation thereunto, except the same shall happen by or through his or their own default respectively; and that in case of any such loss or damage by wilful default, the same shall be answered and made good by the person or persons only by whose default the same loss or damage shall happen or arise; and also that it shall and may be lawful to and for the said trustee, his heirs, executors, administrators, and assigns, by and out of the monies which shall come to his or their hands by virtue of the trusts aforesaid, to retain and reimburse to and for himself and themselves respectively, all costs, charges, damages, and expences which he and they or any of them shall or may suffer, sustain, expend, disburse, be at, or be put unto, in or about the execution of the aforesaid trusts or in relation thereunto; And the said C. H. doth hereby for himself his heirs, executors, and administrators, covenant and agree to and with the said his heirs and assigns, that he the said C. H. and his heirs, and all persons whosoever, lawfully or equitably and rightfully claiming or to claim any estate, right, title, trust, charge, or interest at law or in equity, of, in, to, out of, or upon the said manors, lands, hereditaments, and premises, hereby released, or otherwise assured, or intended so to be, or any of them, or any part thereof, by, from, under, or in trust for him or them, shall and will from time, to time, and at all times hereafter upon every reasonable request and at the costs and charges in all things of any person or persons intituled to any be-

nefit under the uses or trusts hereinbefore declared, make, do, acknowledge, levy, suffer, execute, and perfect, or cause or procure to be made, done, acknowledged, levied, suffered, executed, and perfected, all such further and other lawful and reasonable acts, deeds, devices, conveyances, and assurances in the law whatsoever, either by fine or fines, with or without proclamations, common recovery or recoveries, deed or deeds, inrolled or not inrolled, release, confirmation, or other assurances whatsoever, for further, better, more perfectly, lawfully, and absolutely or satisfactorily granting, releasing, confirming, or otherwise assuring the said manors, lands, hereditaments, and premises, hereby released, or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, royalties, members, and appurtenances, to the uses, upon the trusts, and for the ends, intents, and purposes, and under and subject to the powers, provisoes, declarations, and agreements hereinbefore limited, expressed, and declared of and concerning the same, or as near thereto as may be, and the deaths of parties, the change of interests, and other intervening circumstances will admit, according to the true intent and meaning of these presents, as by the person or persons by whom such request shall be made, or his, her, or their counsel in the law shall be reasonably devised or advised and required, and tendered to be made, done, and executed: *In witness, &c.*

## FORM IX.

*Recovery Deed for the joint Lives of the Tenant for Life,  
and Tenant in the writ of Entry.*

*Husband and Wife seized in Right of the Wife for her Life, join in the Conveyance to the Use of different Persons as Tenants in different Writs of Entry, the Lands being partly in England, and partly in Wales : and Uses are declared in Confirmation of the Estate for Life, &c.*

THIS INDENTURE of five parts, made the day of 46th Geo. III. 1806, between A. M. of &c. Esq. and E. his wife, (formerly the wife, and afterwards the widow of R. D. of B. in the county of S. gentleman) of the first part ; W. H. D. of &c. Esq. of the second part ; S. W. of &c. gentleman, of the third part ; A. B. of the fourth part ; and C. D. of the fifth part. *Whereas* the said A. M. and E. his wife, in right of the said M. are tenants for her life of the messuages, lands, tenements, and hereditaments hereinafter described, and hereby released, or otherwise assured or intended so to be. *And whereas* the said W. H. D. is the son of W. H. D. deceased, who was the nephew of the

said R. D. and as such the said W. H. D. party hereto, is tenant in tail male of the same messuages, lands, tenements, and hereditaments, with the appurtenances; *And whereas* the said W. H. D. party hereto, is also the great nephew and heir at law of the said R. D. *And whereas* the said W. H. D. party hereto, is desirous of suffering two or more common recoveries of the said messuages, lands, tenements, and hereditaments, with the appurtenances; *And* at the instance, and upon the request of the said W. H. D. party hereto, the said A. M. and E. his wife have agreed to join in the conveyance hereinafter contained for the purpose of enabling the said W. H. D. party hereto, to suffer the same recoveries with effect. *Now this indenture witnesseth*, that, for docking, barring, and destroying all estates tail of and in the messuages, farms, lands, and hereditaments hereinafter described, and hereby released, or otherwise assured or intended so to be, and all reversions and remainders expectant or depending on the same estates tail, and all conditions and collateral limitations annexed to the same estates tail, and also in consideration of ten shillings of lawful money, current in Great Britain to each of them the said A. M. and E. his wife, and W. H. D. party hereto, well and truly paid by the said S. W. immediately before the execution of these presents, the receipts whereof are hereby acknowledged; the said A. M. and E. his wife, at the instance and request of the said W. H. D. party hereto, testified by his executing these presents, and also the said W. H. D.

party hereto, according to their several and respective estates and interests, *have* and each and every of them *hath* bargained, sold, and released; and by these presents *do* and each and every of them *doth* bargain, sell, and release unto the said S. W. and his assigns, (in the actual possession of the said S. W. now being in virtue of a bargain and sale thereof made to him by the said A. M. and E. his wife, and W. H. D. party hereto, in consideration of five shillings paid to each of them by the said S. W. by indenture bearing date on the day next before the day of the date, and executed before the execution of these presents for one whole year, to be computed from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute made for transferring uses into possession); *All* &c. (premises in the counties of S. and F.) *And* all houses, &c. (general words for farms); *And* the reversion; &c. *To have and to hold* the said messuages, farms, lands, hereditaments, and all and singular other the premises hereby released; or otherwise assured or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, unto the said S. W. and his assigns, for and during the joint natural lives of the said M. and S. W. nevertheless to the uses hereinafter declared of and concerning the same messuages, farms, lands, and hereditaments respectively; with the appurtenances, (that is to say) *As*, to, for, and concerning all such and so many, and such parts of the same messuages, farms, lands, and hereditaments, with

the appurtenances as are situate in the said county of S. *to the use* of the said S. W. and his assigns, for and during the said term of the joint natural lives of the said E. M. and S. W. and for the intents and purposes hereinafter expressed and declared of and concerning his estate; *And as, to,* for, and concerning all such, and so many and such parts of the same messuages, farms, lands, and hereditaments, with the appurtenances as are situate in the said county of F. *to the use* of the said for and during the said term of the joint natural lives of the said E. M. and S. W. and to the intents, and for the purposes hereinafter expressed and declared of and concerning the estate of the said *And it is hereby declared and agreed by and between the said parties to these presents as far as they respectively are interested, that the said messuages, farms, lands, and hereditaments respectively, with the appurtenances so limited to the use of the said S. W. and respectively and their respective assigns, are so limited to them respectively, to the intent that each of them the said S. W. and respectively may, as to the said messuages, farms, lands, and hereditaments respectively so limited to his use, and every part and parcel of the same with the appurtenances, be tenant of the freehold thereof, to the end that one or more good and perfect common recovery or recoveries with double voucher, may be had and suffered of the same hereditaments; and for that purpose it is hereby directed, declared, and agreed by and between all the said parties to these presents that the said S.*

W. shall permit and suffer the said        or some other person or persons, at the costs and charges in all things of the said W. H. D. party hereto, his heirs, executors, or administrators, at any time or times hereafter to sue forth and prosecute against him the said S. W. out of his majesty's high court of Chancery, one or more writ or writs of entry, *sur disseisin en le post*, returnable before his majesty's justices of the court of Common Pleas at Westminster, and thereby demand of the said S. W. the said messuages, farms, lands, and hereditaments, situate in the said county of S. and hereinbefore limited to the use of the said S. W. and his assigns by the names and descriptions of six messuages, nine stables, fourteen shippens, six barns, one dovecote, eight gardens, three hundred acres of land, two hundred acres of meadow, two hundred acres of pasture, and six acres of land covered with water, and common of pasture for all manner of cattle, with the appurtenances in M. N. N. in H. and B. and in the parishes of N. in H. and D. in H. and that the said        shall permit and suffer the said        or some other person or persons, at the costs and charges in all things of the said W. H. D. party hereto, his heirs, executors, or administrators, at any time or times hereafter to sue forth and prosecute against him the said        one or more writ or writs of *quod ei deforceat* in the nature of a writ or writs of entry, *sur disseisin en le post*, and to be returnable before his majesty's justice or justices of great session for the said county of F. and thereby demand of the said        the said



messuages, farms, lands, and hereditaments with the appurtenances, situate in the said county of F. and limited to the use of the said and his assigns by the names and descriptions of one messuage, one stable, three shippens, two barns, two gardens, one hundred acres of land, fifty acres of meadow, fifty acres of pasture, and two acres of land covered with water, and common of pasture for all manner of cattle, with the appurtenances in M. G. and parish of M. G. or each of them the said S. W. and respectively, shall permit the said to demand the same messuages, farms, lands, and hereditaments respectively, by such other apt, good, sufficient, and proper names, number of messuages, and acres, quantities, qualities, and other descriptions as shall be deemed necessary, proper, sufficient, and requisite to comprise the same; and that each of them the said S. W. and respectively shall in his own person, or by his attorney or attorneys lawfully authorised in that behalf, appear to the same writ or writs, and vouch to warranty the said W. H. D. party hereto; and that the said W. H. D. party hereto, shall, in his own person, or by his attorney or attorneys lawfully authorised in that behalf, appear gratis and freely enter into the warranty of each of them the said S. W. and respectively, and taking the same upon himself, vouch over to warranty the common vouchere for the time being, of each of the said courts respectively, and he shall appear gratis and freely enter into the warranty of the said W. H. D. party hereto, and after imparlance make default, so that judgment

may be given upon each of the said writs respectively for the said or other demandant or demandants to recover all and singular the said messuages, farms, lands, and hereditaments to be demanded by the same writ respectively, and every part and parcel of the same with the appurtenances by such names, quantities, qualities, and other descriptions as aforesaid against the tenant in the same writ, and for the tenant in the same writ to recover in value against the said W. H. D. party hereto, and for him to recover in value against the common vouchee of the court in which the said writ shall be returnable, as is usual in such cases, and that upon all and every recovery and recoveries to be suffered as aforesaid, execution may be sued and prosecuted by, and seisin had, taken, and delivered unto the said or other demandant or demandants accordingly; and that every other act or thing needful, requisite, or proper to be executed for the purpose of suffering and perfecting a common recovery or recoveries of the messuages, farms, lands, and hereditaments in each of the same counties respectively, with double, treble, or other voucher, to dock the estate-tail of the said W. H. D. party hereto, of and in the same messuages, farms, lands, and hereditaments, and all reversions and remainders over and expectant upon the same estate-tail, may be made, done, and executed: And by way of direction and declaration, and not of covenant, it is hereby granted, declared, and agreed, by and between the said parties to these presents as far as they respectively are interested, and they hereby for themselves severally

and respectively, and for their several and respective heirs, executors, and administrators, consent and agree according to their respective estates, rights, and interests in the premises, that each of the recoveries hereby agreed to be suffered shall be suffered and perfected with all possible dispatch; and that the parties respectively, and their respective heirs, on their respective parts, will use their utmost endeavours to give effect to the same recovery and also to these presents, and the grant, release, and confirmation, or other assurance hereby made: *And* it is hereby further directed, declared, and agreed by and between all the said parties to these presents as far as they respectively have any right, title, or interest in the premises, that immediately upon and after judgment obtained and seisin had and taken upon each such recovery as aforesaid the recovery (so as aforesaid or in any other manner or at any other time or times, to be suffered, and also the said bargain and sale for a year, bearing date on the day next before the day of the date of these presents, and also these presents and the assurance hereby made, and all and every other fine and fines, recovery and recoveries, and other assurances whatsoever at any time or times heretofore, and to be at any time, and from time to time hereafter, had, made, done, levied, suffered, executed, and perfected of or concerning all or any part of the said messuages, farms, lands, and hereditaments, hereby released, or otherwise assured, or intended so to be, either by themselves solely and alone, or jointly and together with any other lands, tenements, or hereditaments, by and between all

and every, or any or either of the persons who are parties to these presents, or to which they or any or either of them is or are, or shall or may be parties or privies, or a party or privy, shall as to all the said parties to these presents respectively, as far as they respectively can lawfully or rightfully direct the uses of the same fine or fines, common recovery or recoveries, and other assurances, be and enure and be adjudged, expounded, deemed, decreed, and taken to be and enure, and that the same is and are, and was and were meant and intended, and is and are hereby directed and declared to be and enure, and also that the person or persons to whom the said fine or fines, common recovery or recoveries, and other assurances respectively have or hath been, or shall or may be levied, suffered, made, and executed, shall stand, and be seised as to, for, and concerning the said messuages, farms, lands, and hereditaments hereby released, or otherwise assured or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances; *to the uses*, upon the trusts, and for the ends, intents, and purposes hereinafter limited, expressed, and declared of and concerning the same messuages, farms, lands, and hereditaments, (that is to say) *To the use* of the said E. M. and her assigns for and during the term of her natural life, by way of restoration and confirmation of her estate for life in the same messuages, farms, lands, and hereditaments with the appurtenances, and also of all powers and privileges, if any, annexed or belonging to the same estate for life of the said

E. M. and in the mean time subject thereto, and to the said powers and privileges, *To the use of such person or persons, for such estate or estates, &c. (the usual form to prevent a title of dower).* And to, for, and upon no other use, trust, intent or purpose whatsoever: *In witness, &c.*

## FORM X.

*Deed on substituting another Person as Demandant in the Place of the intended Demandant who died before the Recovery was suffered:*

THIS INDENTURE, &c. between, &c. (the surviving parties to the deed making tenant to the precipe, and the new demandant, (recite that deed shortly, and the death of the intended demandant). *And whereas* no recovery hath been yet suffered of the manors, &c. and on that account it is become necessary that in the recovery to be suffered of those manors, &c. some person shall be named as a demandant in the place or stead of the said intended demandant, and it is intended to name the said                      as such demandant. *Now this indenture witnesseth*, and it is hereby granted, declared, and agreed, by and between all the parties to these presents, that, all and every recovery and recoveries, suffered, or to be suffered, either under or by virtue, or means, or in consequence of the said hereinbefore mentioned indenture of bargain and sale, and in which the said                      is or shall be named a demandant

instead of the said                      shall have the same or the like force, effect, and operation in law to all intents and purposes, and shall enure to the same or the like uses, intents, and purposes, in all respects, as if the name of the said                      had been inserted in the said indenture of bargain and sale, in the place or stead of the name of the said                      as far as the said                      is or shall be named a demandant, in the place or stead of the said                      in any recovery or recoveries suffered, or to be suffered, as aforesaid, any thing in the same indenture contained to the contrary thereof in any wise notwithstanding: *In witness, &c.*

## FORM XI.

*Demise to protect against Forfeiture, on suffering a  
Common Recovery.*

THIS INDENTURE of four parts, made, &c., 1800: between T. H. of, &c. and J. H. of, &c. of the first part; D. L. of, &c. and A. his wife, of the second part; L. R. of, &c. and M. his wife of the third part; and A. B. of, &c. of the fourth part. Whereas the said D. L. and A. his wife, and L. R. and M. his wife, have agreed to suffer a common recovery of the messuages, farms, lands, tenements, and hereditaments hereinafter described, and also bargained and sold, or otherwise assured, or intended so to be, and the uses of the same recovery are to be declared by an indenture of seven parts, already prepared, and dated or to be dated on the day of            now instant, and made or intended to be made between the said T. H. and J. H. of the first part; the said D. L. and A. his wife of the second part, the said L. R. and M. his wife of the third part; the Rev. J. J. of, &c. clerk, of the fourth part; T. J. of, &c. gent. and the Rev. H. R. of, &c. clerk, of the fifth part; E. B.



of, &c. gent. of the sixth part; and of the seventh part: and the said T. H. and J. H. who are trustees for the said A. L. are to join in making a tenant to the writ of entry on which the said recovery is to be suffered. *And whereas* it is deemed expedient that a bargain and sale, or demise for years, should be made of the said messuages, farms, lands, tenements, and hereditaments, for the purpose of protecting the persons beneficially intitled to the same messuages, farms, lands, tenements, and hereditaments, from any claim on the ground that a forfeiture may or shall be committed by means of such recovery, as to such of them the said T. H., J. H., D. L. and A. his wife, and L. R. and M. his wife, as are or may be deemed to be mere tenants for life. *Now this indenture witnesseth*, that for affording protection against any such claim of forfeiture, and in consideration of ten shillings of lawful money, &c. to each of them the said T. H., J. H., D. L. and A. his wife, and L. R. and M. his wife, well and truly paid by the said A. B. immediately before the execution of these presents, the receipt whereof is hereby acknowledged; the said T. H. and J. H. on the nomination, and at the instance and request, and by the direction and appointment, of the said D. and A. his wife, and L. R. and M. his wife, testified by their severally executing these presents, and also the said D. L.; and A. his wife, and L. R. and M. his wife, *have*, and each and every of them *hath*, granted, bargained, sold, and demised, and by these presents *do*, and each and every of them *doth*, grant, bargain, sell, and demise, to the said A. B. his execu-

tors, administrators, and assigns *all*, &c. (parcels as in release); and the reversion and reversions, remainder and remainders, yearly and other rents of the said messuages, farms, lands, tenements, and hereditaments, hereby bargained, sold, and demised, or intended so to be, and every part and parcel of the same, with their, and every of their rights, members, and appurtenances, and all rent-charges payable thereout or charged thereupon, *to have and to hold* the said messuages, farms, lands, tenements, rent-charges, hereditaments, and all and singular other the premises hereby bargained, sold, and demised, or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, unto the said A. B. his executors, administrators, and assigns, from the day next before the day of the date of these presents for and during the term or time, of one hundred years thence next ensuing, and fully to be complete and ended, if the estates and interests of the said A. L., L. R. and M. his wife, or any or either of them in the same premises respectively, shall so long continue: *nevertheless* only by way of protection against any forfeiture to be claimed by reason or means of any recovery or recoveries to be suffered as aforesaid, and for that purpose to be held from time to time *in trust* for the person or persons who for the time being, and from time to time, are intended to be entitled to the said messuages, farms, lands, tenements, and hereditaments, according to the uses, trusts, ends, intents, and purposes, powers, provisoes, declarations, and agreements, contained, or to be contained in the said indenture dated or to be dated on the        day of        now

instant, and to be thereby declared of the same messuages, farms, lands, tenements, and hereditaments without any prejudice or eviction, at law or in equity, by reason or on account of, any forfeiture which can, shall, or may be claimed by reason of the recovery or recoveries agreed to be suffered as aforesaid, and upon no other trust, and for no other end, intent, or purpose whatsoever: *In witness, &c.*

## FORM XII.

*Another Demise of divers Messuages, &c. previous to suffering a Recovery, for the Purpose of protecting against Forfeiture.*

THIS INDENTURE made, &c. 1806. between J. T. of, &c. of the one part; and A. B. of &c. of the other part; *whereas* the said J. T. is desirous of suffering a common recovery of the messuages, lands, tenements, and hereditaments, hereinafter described, and also demised or otherwise assured or intended so to be, and it is deemed advisable or expedient, that a bargain and sale, or demise for years, should be made of the same messuages, &c. for the purpose of protecting the said J. T. and his assigns, from any claim on the ground that a forfeiture may or shall be committed by the said J. T. by means of the recovery or recoveries intended to be suffered by him, and on account of his being considered as tenant for life only of the same hereditaments. *Now this Indenturewitnesseth*, that for affording protection against any such forfeiture, and in consideration of ten shillings of lawful money, &c. to the said J. T. well and truly paid by the said A. B. immediately before the execution of these presents;

the receipt whereof is hereby acknowledged, the said J. T. *hath* granted, bargained, sold, and demised, and by these presents *doth* grant, bargain, sell, and demise, unto the said A. B. his executors, administrators, and assigns, *all* the messuages, lands, tenements, and hereditaments, situate, standing, lying, and being in the several parishes of W., W., T., and D. in the counties of S. and W. or elsewhere within this realm, which by the last will and testament of R. T. of W. in the county of S. gent. deceased, were given and devised unto C. N. the elder, of W. aforesaid, T. W. of H. in the parish of S. in the county of S. or W. or one of them, yeoman, R. T. of B. in the county of W. toy-maker, and R. W. of W. in the said county of S.; and to the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, *in trust*, and for such uses, ends, intents, and purposes, as are in the said will expressed and declared, and every part and parcel of the same; which said will bears date on or about the 3d day of September, in the year 1781, and was duly proved in the court of on or about the day of *And all houses, &c. [general words]. And the reversion, &c. [as in other deeds]; To have and to hold* the said messuages, lands, tenements, and hereditaments, and all and singular other the premises hereby bargained, sold, and demised, or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, unto the said A. B. his executors, administrators, and assigns, from the day next before the day of the date of these presents, for and

during the term or time of one hundred years thence next ensuing, and fully to be complete and ended, if the said J. T. shall so long live: *nevertheless* only by way of protection against any forfeiture to be claimed by reason or means of any recovery or recoveries to be suffered by the said J. T. and for that purpose to be held, *in trust* for the said J. T. and his assigns, without any prejudice or eviction, by reason or on account of any forfeiture which can, shall, or may be claimed by reason of any recovery or recoveries to be suffered of the same messuages, lands, tenements, and hereditaments, by the said J. T. and upon no other trust, nor for any other end, intent, or purpose whatsoever: *In witness, &c.*

## FORM XIII.

*The £100,000 Clause; being a Clause in a Recovery Deed to cease the Estate limited by a Tenant for Life, for the Purpose of assisting a Tenant in Tail in suffering a Recovery. The Object of this Clause is in most cases to prevent a Merger of the Estate for Life in the Ownership under the Estate Tail: and to revive the Estate for Life, and all Powers annexed thereto.*

PROVIDED ALWAYS, and these presents are upon this express condition, that if the said his executors, or administrators, shall not on the day of                      well and truly pay or cause to be paid to the said                      or her assigns, the full sum of £100,000 of lawful money of the united kingdom of Great Britain and Ireland, current in Great Britain; then the grant, bargain, and sale, or other assurance hereby made to the said                      and his heirs, during the life of the said                      [or during the joint lives of the said                      and                      ] shall cease and be void to all intents and purposes, (so that the estate of the said                      may be discharged of and from the limitation hereby made for the life [or joint lives] of the said                      ).

## GENERAL FORM OF CLAUSE

*Declaratory of the Intention and Agreement to suffer a common Recovery, and declare the Uses thereof with one of the more ordinary Variations. For other Variations, see the Appropriate Forms.*

TO THE INTENT that the said  
 may be tenant of the freehold of the said  
 hereby released or otherwise assured,  
 or intended so to be, and every part and  
 parcel of the same, with their rights, members,  
 and appurtenances, to the end, that one or more  
 good and perfect common recovery or recoveries,  
 with double voucher, may be had and suffered  
 of the same hereditaments. And for that pur-  
 pose, it is hereby directed, declared, and agreed,  
 by and between all the said parties to these pre-  
 sents, that the said shall permit and  
 suffer the said or some other per-  
 son or persons, at the costs and charges in all  
 things, of the said his heirs, execu-  
 tors, or administrators, at any time or times  
 hereafter, to sue forth and prosecute against  
 him, the said out of his majesty's

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\* *When the lands are in any of the Welsh counties,] One or more writ or writs of quod ei deforcat, in the nature of*



high court of Chancery, ' one or more writ or writs of entry *sur disseisin en le post*, returnable before his majesty's<sup>d</sup> justices of the court of Common Pleas, at Westminster, and thereby demand of the said                    the                    and premises hereby released, or otherwise assured, or intended so to be, with their, and every of their rights, members, and appurtenances, ' by the names and descriptions of                    or by such other apt, good, sufficient, and proper names, number of messuages, and acres, quantities, qualities, and other descriptions, as shall be deemed necessary, proper, sufficient, and requisite to comprise the same. ' And that the said                    shall in his proper person, or by his attorney or attorneys, lawfully authorized in that behalf, ap-

a writ or writs of entry, *sur disseisin en le post*, &c. and to be returnable before his majesty's justice or justices of great session for the said county of

<sup>b</sup> *When the lands are in a county palatine.*] Out of his majesty's chancery for the county palatine of

<sup>c</sup> *When the lands lie in two or more counties.*] Two or more writs, &c. and by one of the said writs demand of the said the said                    situate in the said county of                    by the names and descriptions of                    and by the other of the said writs demand of the said                    the said                    situate in the said county of                    by the names and descriptions of

<sup>d</sup> Justices of assize for the same county.

<sup>e</sup> Sometimes the description is omitted.

<sup>f</sup> *As to lands in Wales.*] And shall make protestation to pursue the said writ or writs in the nature of a writ or writs of entry, *sur disseisin en le post* at the common law, according to the statute in that behalf.

pear to the same writ or writs, and vouch to  
 warranty the said                      and that the said  
                  shall in his own proper person or by his  
 attorney or attornies, lawfully authorised in that  
 behalf, appear gratis, and freely enter into the  
 warranty of the said                      and taking the same  
 upon himself, vouch over to warranty, the com-  
 mon vouchee of the said court of \* Common  
 Pleas for the time being, who shall appear gratis,  
 and freely enter into the warranty of the said  
 and after imparlance make default so that judg-  
 ment may be given upon the said writ or writs,  
 and every of them for the said                      or other  
 demandant or demandants, to recover all and sin-  
 gular the said                      hereby released, or otherwise  
 assured, or intended so to be, and every part and  
 parcel of the same, with their and every of their  
 rights, members, and appurtenances, by such  
 names, quantities, qualities, and other descriptions  
 as aforesaid, against the said                      and for the said  
                  to recover in value against the said                      and for  
 the said                      to recover in value against the common  
 vouchee as is usual in such cases; and that upon all  
 and every recovery and recoveries to be suffered as  
 aforesaid, execution may be sued and prosecuted by,  
 and seisin had, taken, and delivered unto the said  
                  or other demandant or demandants, accord-  
 ingly; And that every other act or thing needful,  
 requisite, or proper, to be done or executed for the  
 purpose of suffering and perfecting a common re-  
 covery or recoveries of the said                      hereby  
 released or otherwise assured or intended so to be,

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\* Great session, or county palatine.

with double, treble, or other voucher to dock the estate tail<sup>a</sup> of the said                      of and in the same                      and all reversions and remainders over and expectant upon the same estate may be made, done, and executed; *And* by way of direction and declaration, and not of covenant, it is hereby granted, declared, and agreed, by and between the said parties to these presents, as far as they respectively are interested, and they hereby for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, consent and agree according to their respective estates, rights, and interests in the premises, that the recovery hereby agreed to be suffered shall be suffered and perfected with all possible dispatch; and that they respectively and their respective heirs on their respective parts will use their utmost endeavours to give effect to the same recovery<sup>1</sup> and also to these presents, and the grant, release, confirmation or other assurance hereby made: *And* it is hereby further directed, declared, and agreed, by and between all the parties to these presents as far as they respectively have any right, title, or interest in the premises, that immediately upon and after judgment obtained, and seisin had and taken upon such recovery or recoveries as aforesaid, the recovery or recoveries so as aforesaid, or

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<sup>a</sup> *When parties join to extinguish dower or convey.*] And to extinguish the dower, right or title of dower, of the said                      and pass the several estates of the said                      and                      and his wife of                      and in, &c.

<sup>1</sup> Or recoveries.

in any other manner, or at any other time or times to be suffered; *And also* the bargain and sale for a year, bearing date on the day next before the day of the date of these presents; and also these presents, and the assurance hereby made, and all and every other fine and fines, recovery and recoveries, and other assurances whatsoever, at any time or times heretofore and to be at any time, and from time to time hereafter, had, made, done, levied, suffered, executed, and perfected, of or concerning all or any part of the said hereby released, or otherwise assured, or intended so to be, either by themselves solely and alone or jointly and together with any other lands, tenements, or hereditaments,<sup>\*</sup> by or between all and every or any other or either of the persons who are parties to these presents, or to which they, or any, or either of them is, are, or shall, or may be parties or privies, or a party or privy, shall as to all the said parties to these presents respectively, as far as they respectively, can lawfully, or rightfully direct the uses of the same fine and fines, common recovery and recoveries, and other assurances be and enure, and be adjudged, expounded, deemed, decreed, and taken to be and enure, and that the same was and were meant and intended, and is and are hereby directed and declared to be and enure; *And also* that the person or persons to whom the said fine or fines, common recovery or recoveries, and other assurances respectively have or hath been, or

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<sup>\*</sup> *When an undivided share.*] Or jointly and together with any other part of the same.

shall or may be levied, suffered, made, and executed, shall stand and be seised, <sup>k</sup> *As* to for and concerning the said hereby released, or otherwise assured, or intended so to be, and every part and parcel of the same with the appurtenances, *To the use, &c.*

---

<sup>k</sup> This clause of qualification should never be omitted.

## FORM XV.

*A More concise Form of a Declaration and Agreement to  
suffer a Common Recovery.*

TO THE INTENT that the said        may be  
tenant of the freehold of the said        hereby  
released or otherwise assured or intended so to be,  
with the appurtenances, to the end that one or  
more common recovery or recoveries with double  
voucher may forthwith, and at the costs and  
charges of the said        be had and suffered of  
the same premises, by the names and descriptions  
of        upon a writ or writs of entry *sur dis-*  
*seisin en le post* in which the said        shall be  
demandant against the said        who shall vouch  
to warrentry the said        who shall vouch the  
common vouchee as is usual in such cases, so that  
judgment may be given for the said        to re-  
cover the said        hereby released or otherwise  
assured or intended so to be against the said  
and for the said        to recover in value against  
the said        and for the said        to recover in  
value against the common vouchee, and so that  
execution may be awarded and seisin taken upon  
the recovery or recoveries to be suffered as afore-  
said, according to the usual form of common re-  
coveries used in like cases,

## FORM XVI.

*Short Declaration of Uses.*

AND it is hereby directed, declared, and agreed, by and between the parties to these presents, as far as they respectively are interested, that after the recovery or recoveries hereby agreed to be suffered, shall be suffered, as aforesaid, or in any other manner, the same recovery or recoveries, and all fines levied and to be levied, and recoveries suffered, and to be suffered, of the said hereinbefore mentioned and intended to be hereby released, or any of them, either alone or jointly with any other lands and hereditaments, shall, *as, to,* and concerning the hereinbefore released with the appurtenances, operate, and enure, *to the use of* said her heirs and assigns for ever.

## FORM XVII.

*Covenant to suffer a Common Recovery.*

AND also that in the first term which shall happen next after the death of the said        or in her life time, if the concurrence of the said        or her assigns can be obtained thereto, he the said        or his heirs, shall or will, at his or their own costs and charges make, do, and execute, consent to, and concur in all such acts, deeds, proceedings, and assurances, as shall be necessary and proper for suffering a good, valid, and effectual common recovery of the said        hereby granted and demised, or otherwise assured or intended so to be, so as to bar the said estate-tail of the said        and the reversion in fee-simple, expectant thereon; and enlarge the same estate-tail into an estate in fee-simple, and also for declaring that the same recovery when suffered, shall as to the        hereby granted and demised or intended so to be, operate and enure to the use of the said        his executors, administrators, and assigns, for all the residue of the said term of 500 years which



shall be then to come and unexpired, in confirmation of and for the purpose of giving more full and complete effect to these presents and the term hereby granted, subject nevertheless to the proviso or agreement for redemption, hereinbefore contained; *And it is* hereby further directed, declared, and agreed, by and between the parties to these presents, that all fines levied, and to be levied, and all recoveries suffered and to be suffered, and all other assurances, made and to be made of the said hereby granted or demised or intended so to be, either alone or with other lands and hereditaments, shall as to the said hereby granted and demised or intended so to be, operate and enure to the use of the said his executors, administrators, and assigns, for the said term of 500 years or the then residue thereof according to the true intent and meaning of these presents, in confirmation of, and for the purpose of giving effect to the same term, subject nevertheless to the proviso or agreement for redemption hereinbefore contained.

## FORM XVIII.

*Desire of the Tenant of a remote Estate-Tail to suffer a Recovery.*

AND WHEREAS the said J. B. is desirous of enlarging the several estates-tail limited to him as aforesaid, into estates in fee-simple, subject to the estate-tail of him the said S. D.

## FORM XIX.

*Expediency of Recovery.*

AND WHEREAS it is deemed expedient that a recovery should be suffered by the said B. B. party hereto, for the purpose of barring his estate-tail, if any, in the said &c. hereinafter released, &c. and the reversions and remainders over and expectant upon such estate-tail.

## FORM XX.

*Request to join in suffering a Common Recovery.*

AND WHEREAS the said F. G. hath requested the said B. B. party hereto, and J. T. and M. his wife to join with him in suffering a common recovery of the said hereinafter released, and in limiting the same *to the use* of the said F. G. his heirs and assigns, for ever discharged of the said estate-tail and the reversions and remainders over, and also discharged from the dower, right, and title of dower of the said M. T.

## FORM XXI.

*Short Recital of the Creation of the Estate-Tail, and Agreement to suffer a Recovery for the purpose of effecting a Partition.*

WHEREAS the said F. A., P. and E. M. are the daughters and only children of J. A. late of, &c. and as such are tenants in common in tail of the messuages and hereditaments hereinafter described, and also released, or otherwise assured, or intended so to be, under and by virtue of the last will and testament of R. W., &c. bearing date, &c. and proved in the prerogative court of the archbishop of Canterbury on, &c. *And whereas* the said W. P. and F. A. his wife, and E. M. have agreed to join in suffering a common recovery of the said messuages, &c. and have also agreed upon a partition of the same messuages, &c. and for that purpose have consented and agreed that the same messuages, &c. shall be limited, *to the uses* hereinafter expressed and declared, of and concerning the same,

## FORM XXII.

*Deduction of Title into the intended Vouchee.*

AND WHEREAS the said J. C. is the only son and heir at law of the said L. C. deceased, (formerly L. N.) by A. C. her husband deceased : and the said L. C. was one of the three daughters of R. N. deceased ; and the said J. C. (being the only surviving issue of the said R. N.) is seised to him and his heirs of the said hereinafter described, and hereby released, or otherwise assured, or intended so to be, for an estate-tail in possession, under or by virtue or means of certain indentures of lease and release, bearing date, &c., and made, &c., whereby the said were conveyed and assured or appointed to M. T. since deceased for her life, with remainder as to one of the said *to the use* of W. N. for an estate-tail which is determined by his death, without issue, with remainder *to the use* of the said R. N. in tail, and as to the other of the said with the appurtenances, *to the use* of the said R. N. in tail.

## FORM XXIII.

*Intention to suffer Recovery and Agreement of Tenant  
for Life to join in Recovery Deed.*

AND WHEREAS the said        is desirous to bar the said estate-tail, and all remainders dependant thereon, and hath requested the said        to do such acts as shall be necessary for vesting in some persons the freehold of the said premises that he may become tenant thereof, and that one or more common recovery or recoveries may be suffered of the same. *And whereas* the said        hath consented to grant and release the said premises to        in manner hereinafter mentioned, yet so as not to prejudice the uses or estate by the said recited settlement limited to her for life, for her jointure; or any of the powers, remedies, and privileges for her benefit therein contained.

N. B. *The limitation was for the joint lives of the jointress and tenant to the præcipe; subject to a condition to defeat the estate in default of payment of £100,000 on a given day.*

## FORM XXIV.

*Deduction of Title into the intended Vouches, and Determination to suffer Recovery,*

AND WHEREAS under and by virtue of the said will of W. H. late of, &c. deceased, bearing date, &c. and by the several deaths of A. the wife of the said testator, and E. B. who were tenants for life under that will, the said E. J. is tenant in tail in possession of the messuage, &c. hereinafter particularly described, and also released, or otherwise assured, or intended so to be, and is desirous and hath determined to suffer a recovery thereof.

## FORM XXV.

*Doubts of the Validity of a former Recovery. And Agreement to suffer another Recovery.*

AND WHEREAS doubts are entertained of the validity of the said last recited recovery for want of the concurrence of the person in whom the legal estate was vested at that time, and on that account it is deemed expedient that another recovery should be suffered; and upon the application, and at the instance and request of the said G. V. the said E. R. hath agreed to join in the conveyance hereinafter contained, and to suffer another recovery of the said capital messuage, &c.



## FORM XXVI.

*Determination to suffer a Recovery, and Consent of Dowress  
to join.*

AND WHEREAS the said J. A. hath determined to suffer a common recovery of the said hereinafter described, and hereby released, &c. and to settle the same *to the uses* upon the trusts, and for the ends, intents, and purposes hereinafter expressed and declared, concerning the same, and the said A. A. hath agreed to join in the conveyance hereinafter contained and in the recovery hereby agreed to be suffered for the purpose of extinguishing all such dower, right, and title of dower as she hath of, and in the same hereditaments.

## FORM XXVII.

*Recital of Two Bargains and Sales, and Two Recoveries.*

AND WHEREAS by two several indentures of bargain and sale, of three parts, one bearing date on or about, &c. and the other bearing date on or about, &c. and each made, or expressed to be made between, &c. and each duly inrolled in his majesty's court of K. B. at Westminster, and a common recovery suffered in Michaelmas term, in the year of the reign of his present majesty in pursuance of a covenant or agreement in that behalf, contained in the said indenture of bargain and sale, bearing date on, or about, &c. and a common recovery suffered in Michaelmas term, in the 39th year of the reign of his present majesty in pursuance of a covenant or agreement in that behalf contained in the indenture of bargain and sale, bearing date on or about, &c. in each of which recoveries the said        was demandant; the said tenant, and the said vouchee, who vouched over the common vouchee, all, &c. were conveyed, &c.

## FORM XXVIII.

*Recital of Recovery Deeds, and Recovery.*

AND WHEREAS for better securing the payment of the said principal sum of £      and interest, by indentures of lease and release, bearing date, &c. and made, &c. and by a common recovery suffered in pursuance of an agreement contained in the same indentures of lease and release, the said manor, &c. were limited and assured, *to the use* of the said      his heirs, and assigns, for ever, subject, nevertheless, to such right, power, and equity of redemption by, or in favor of the said      his heirs, executors, administrators, or assigns, as was then subsisting of, in, or upon the same manors, &c. under or by force, or virtue of the said hereinbefore recited indenture of release and mortgage.

## FORM XXIX.

*Recital of Recovery suffered.*

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AND WHEREAS a common recovery was suffered as of Trinity term, in the said year of our Lord 1782, in that recovery the said P. D. was duly vouched, in pursuance of the said recited indenture of bargain and sale.

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## FORM XXX.

*Short References to a Recovery suffered: and the Uses thereof.*

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AND WHEREAS the said sir R. L. hath in due form of law suffered a common recovery of all the manors, &c. comprised in the said term of 1200 years, and by virtue or means of the said recovery and the declaration of the uses thereof, is now seised of the fee-simple and inheritance of the same lands and hereditaments.

## FORM XXXI.

*Modes of introducing the Recital of a Lease, Release, Fine, and Recovery, and Declaration of the Uses ther. of.*

AND WHEREAS by indentures of lease and release, &c. made between, &c. and by a fine levied, and common recovery suffered, in pursuance of several covenants and agreements contained in the said indenture of release, and by a declaration of the uses of the same fine and common recovery respectively contained in the said indenture of release, all were, &c.

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## FORM XXXII.

*Recovery suffered after Death of Tenant for Life.*

AND WHEREAS after the decease of the said countess, the said J. earl of S. in order to bar all estates-tail and remainders, and to acquire to himself an absolute estate and interest, did by indentures of lease and release bearing date respectively on or about, &c. the release being of three parts, and made or expressed to

[1.]

be made between, &c. grant, release, and convey, all and singular the same hereditaments and premises unto and to the use of the said . and his heirs to make him tenant of the freehold in order that a common recovery might be suffered thereof, and the same common recovery was by the said indenture of release, of, &c. declared to enure to the use of the said J. earl of S. his heirs and assigns for ever; and a common recovery in which the said J. earl of S. was vouched, was accordingly suffered and perfected as of Michaelmas term, 1797.

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### FORM XXXIII.

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#### *A Recovery suffered with treble Voucher.*

AND WHEREAS the said R. W., &c. did as of the same Trinity term suffer a common recovery of the lands and hereditaments comprised in the said fine, and among them of the said messuage or tenement, &c. hereby released, &c. wherein H. W. gent. was demandant, the said H. B. tenant, the said R. W. the first vouchee, the said J. N. and M. his wife were second vouchees, and the said J. N. and M. his wife vouched over the common vouchee.

## FORM XXXIV.

*Recovery suffered of Customary Lands, &c.*

AND WHEREAS for the purpose of extinguishing all estates tail and equitable interests in the nature of an estate-tail, which the said C. J. C. then had in the said parcel of customary land with the appurtenances, and for barring all remainders, and other estates expectant on the estates tail or equitable interests, the said C. J. C. did on or about the day of now last past, duly surrender the same parcel of customary land to of and a recovery hath since been duly suffered in the court of the lord of the said manor of the same parcel of customary land with the appurtenances, in which the said A. B. was demandant, the said tenant, and the said C. J. C. vouchee, who vouched over according to the usual and customary mode of suffering recoveries for barring intails of copyhold lands, parcel of the said manor, and the same parcel of customary land hath been surrendered by the said to the use of the said C. J. C. his heirs and assigns, and he hath been readmitted thereto.

[L 2]

## FORM XXXV.

*That it is expedient that a Tenant in a former Recovery Deed  
shall join in a new Recovery Deed.*

AND WHEREAS it is deemed proper that the said E. E. should join in the release made by these presents of the hereditaments of the said A. A. to the end that the said E. E. may thereby pass out of him, any estate or interest in the same hereditaments which may have vested in him by force of the general clause following the particular description of the parcels contained in the indentures of lease and release of the      and days of      now last past, and which are hereinafter recited.



## FORM XXXVI.

*Agreement to comprise other Lands in the Recovery, and  
declare the Uses of these Lands in another Deed.*

AND WHEREAS it hath been agreed that other lands and hereditaments of the said B. B. party hereto, situate in the parish of L. in the said county of L. and which are to be conveyed to the said J. A. by other indentures of lease and release, the indenture of lease bearing date, &c. shall be comprised in the said recovery, and that D. the wife of the said B. B. party hereto shall join with the said B. B. in the said recovery: and that the uses of the lands in L. shall be declared to or in favor of the said J. A. his heirs and assigns, by the said last mentioned indenture of release.

## FORM XXXVII.

---

*Recital of Lease, Release, and Common Recovery, and  
Declaration of the Uses thereof.*

AND WHEREAS by indentures of lease and release bearing date respectively on or about the        and        days of        now last past, the indenture of release being of four parts, and made or expressed to be made between, &c. and by a common recovery duly suffered in Michaelmas term now last past, in which the said        was demandant, the said        tenant, and the said        vouchee, who vouched over, and by a declaration of the uses of that recovery contained in the said last mentioned indenture of release: all the said messuages, &c. are discharged of and from the said estate-tail, and all reversions and remainders over and expectant on the same estate-tail, and now stand limited (subject nevertheless as hereinbefore is mentioned), *to the use* of the said        his heirs and assigns for ever.

## FORM XXXVIII.

---

*Recovery suffered pursuant to Agreement.*

AND WHEREAS a common recovery of the said premises was suffered in Michaelmas term in the     year of the reign of his present majesty king George the third, between the said F. F. demandant, the said J. B. tenant, and the said B. L. vouchee, pursuant to the said covenant or agreement in that behalf contained in the said last in part recited indenture of release.

## FORM XXXIX.

*Recovery voidable for want of the Concurrence of Tenant for Life. Expediency of another Recovery. Consent of necessary Parties to join.*

AND WHEREAS it is apprehended that the said hereinbefore recited recovery was voidable as far as the same related to or concerned the said messuage, &c. hereby released, or otherwise assured, or intended so to be, for want of the concurrence of the said J. B. in conveying the freehold of the said messuage, &c. to the said H. B.; and it is therefore deemed expedient that another recovery should be suffered. *And Whereas* the said J. N. and M. his wife are willing to join in the said recovery, and to be vouched for the purpose of barring the estate-tail of the said M. M. in the said messuages, &c. hereby released, &c. *And Whereas* the said J. S., J. N. and M. his wife, have applied to the said H. B. and J. B. and requested them to join with the said in conveying the said messuages, &c. hereby released, &c. unto and to the use of the said his heirs and

assigns, *to the intent* that he may be tenant of the freehold of the same messuage, &c. and a recovery be suffered thereof, to the use of the said J. S. his heirs and assigns for ever; upon the trusts which by the said last hereinbefore recited indentures of lease and release are declared of and concerning the said messuages, &c. hereby released, &c.

---

## FORM XL.

---

*Recital of Bargain and Sale and Common Recovery,  
and Declaration of the Uses thereof.*

AND WHEREAS by indenture quadruplicate, bearing date on or about the      day of      made between, &c. and duly inrolled in the court of      on or about the      day of      and by a common recovery suffered in pursuance of a covenant for that purpose contained in the said indenture of bargain and sale, and a declaration of the uses of that recovery in the same indenture of bargain and sale, the said manors, messuages, lands, and hereditaments were discharged from the estate-tail of, &c. and limited to the use of the said H. G. and F. G. their heirs and assigns for ever.

## FORM XLI.

*Recital of Indentures of Lease, Release, and Common Recovery, and Declaration of Uses.*

AND WHEREAS under and by virtue of certain indentures of lease and release bearing date respectively, on or about the      and      days of      in the year      and made or expressed to be made between, &c. and by means of a common recovery duly suffered in pursuance of a covenant or agreement contained in the said indenture of release and a declaration of the uses of that recovery, contained in the same indenture of release, *all* that manor, and those messuages, &c. hereinafter mentioned and described to be situate in the county of N. and hereby granted, &c. with their and every of their rights, members, and appurtenances were conveyed or otherwise assured, *to the use, &c.*

AN  
**ANALYTICAL DIGEST,**  
 BY WAY OF  
***INDEX***  
 TO THE  
**PRINCIPAL POINTS**  
 IN THIS VOLUME.

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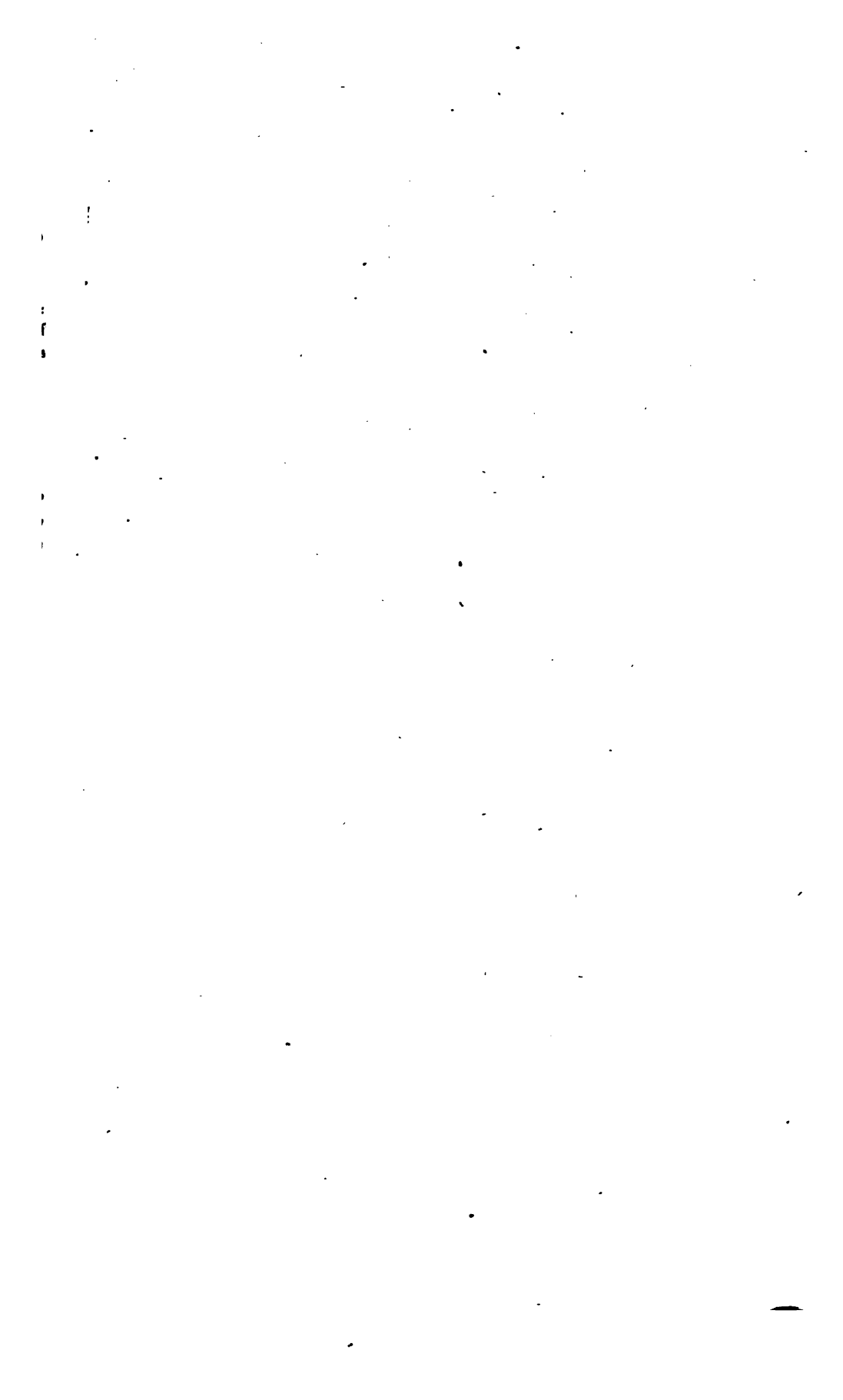
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